FINKELSTEIN & KRINSK LLP
Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
wrr@classactionlaw.com
Trenton R. Kashima, Esq. (SBN 291405)
trk@classactionlaw.com
550 West C Street, Suite 1760
San Diego, California 92101
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

LINDA STADE, individually and on behalf of all other similarly situated California residents,

Plaintiff,

v.

SAFEWAY, INC., a Delaware Corporation,

Defendant.

Case No: **'15CV1381 WQHBLM**

CLASS ACTION COMPLAINT FOR:

- **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;**
- **VIOLATION OF CAL. CIV. CODE §§ 1750 *et seq.*;**
- **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
- **BREACH OF WARRANTY; and**
- **VIOLATION OF 15 U.S.C. §§ 2301 *et seq*.**

JURY TRIAL DEMANDED

Linda Stade ("Stade" or "Plaintiff"), individually and on behalf of others all similarly situated, based on investigation of counsel as to the actions and omissions of defendant herein, and by their own individual knowledge as to Plaintiff's own circumstances, hereby complain against defendant Safeway, Inc. ("Defendant" or "Safeway") as follows:

INTRODUCTION

1. This consumer class action seeks for Defendant's false and misleading advertisements and packaging that falsely represents that "Safeway Select" coffee packets are "FOR USE BY OWNERS OF KEURIG MACHINES." These representations, and similar misrepresentations and warranties by Safeway are false and misleading because the Safeway Select coffee packets are not compatible with "Keurig 2.0" coffee brewing machines and the misrepresentations are only apparent following consumer purchases of the incompatible Safeway product. The Safeway Select coffee packets (the "Safeway Coffee Packets" or "Packets") are worthless to Plaintiff and other similarly situated consumers because they do not function in the "Keurig machine[s]" used by Plaintiff and the Class.

2. The Safeway Select coffee packets are completely unfit for their sole warranted purpose - "use by owners of Keurig machines". Plaintiff relied upon Defendant's packaging that the Safeway Coffee Packets would be suitable for Plaintiff, the owner of a brand-new Keurig machine. Instead, the Safeway Coffee Packets were not recognized by Plaintiff's new Keurig 2.0 coffee brewer, which is programed by Keurig to reject the Safeway Coffee Packets at issue in this lawsuit.

3. Defendant sells tens of thousands of the same Safeway Coffee Packets to consumers nationwide and in California that will not work with Keurig 2.0 machines. Defendant Safeway's false and misleading advertising and packaging violates consumer protection and warranty laws. Accordingly, this class action seeks remedies

for a national Class [1] under the Magnuson Moss Warranty Act ("MMWA") for Defendant's breaches of the express warranty that Safeway Coffee Packets are "FOR USE BY OWNERS OF KEURIG MACHINES." Plaintiff also seeks a remedy for a California subclass under California's Unfair Competition Law ("UCL"), the California False Advertising Law ("FAL"), and the California Consumer Legal Remedies Act ("CLRA"). Plaintiff seeks classwide restitution and/or disgorgement, actual and exemplary damages as provided by the MMWA and CLRA, corrective advertising, product refund, correction of Defendant's advertising and packaging to not be misleading, and such other injunctive or equitable remedies as the Court shall deem appropriate.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1446, and 1453(b). Plaintiffs allege that Plaintiffs and Class members are citizens of different states as Defendant, and the cumulative amount in controversy for Plaintiffs and the Class exceed $5 million, exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District, and because Defendant:

(a) conducts business itself or through agent(s) in this district, by advertising, marketing, distributing and/or manufacturing its Safeway Select coffee packets in this District; and/or

[1] The "**National Class**" pled herein is defined as: "All users of Keurig 2.0 coffee machines within the United States, who since on or about December 31, 2014 purchased "Safeway Select" coffee packets represented to be 'for use by owners of Keurig Machines'." The "**California Sub-Class**" pled herein is defined as: "All users of Keurig 2.0 coffee machines within the State of California, who since December 31, 2014 purchased "Safeway Select" coffee packets represented to be 'for use by owners of Keurig Machines'." When referred to collectively, the National Class and California Sub-Class are described simply as the "Class."

(b) is licensed or registered in this District; and/or

(c) otherwise has sufficient contacts with this District to justify Defendant being fairly brought into court in this District.

PARTIES

6. Plaintiff Linda Stade ("Plaintiff" or "Stade") is, and at all times relevant hereto was, a resident of California and a citizen of California. Plaintiff Stade purchased Safeway Coffee Packets at her local Safeway supermarket in Coronado, California. Upon deciding whether to purchase the Safeway Coffee Packets, she relied on Defendant's packaging, labeling and promotion representing that that Safeway Coffee Packets are "FOR USE BY OWNERS OF KEURIG MACHINES." *See* Exhibit A (The Packaging to the Safeway Select Coffee Packets purchased by Plaintiff).

7. The compatibility of the Safeway Coffee Packets with Plaintiff's Keurig machine was a material consideration to Plaintiff's purchasing decision, who would not have purchased Defendant's Safeway Coffee Packets if she had known they were not compatible with Keurig 2.0 coffee brewing machines.

8. Defendant Safeway, Inc. is a Delaware Corporation having headquarters located at Pleasanton, California. Safeway is a major grocery store chain that carries private label products such as the Safeway Coffee Packets at issue in this litigation. There are approximately 140 Safeway supermarket stores operated by Defendant in the State of California selling the Safeway Coffee Packets, and more than 1,300 Safeway stores nationwide.

ADDITIONAL SUBSTANTIVE ALLEGATIONS

9. Keurig coffee machines are single service coffee systems made by the Keurig company. The Safeway Coffee Packets sold by Defendant Safeway are purportedly generic versions of "K-Cups," which are used in the *original* Keurig coffee machines, but not Keurig 2.0 coffee machines. Each K-Cup is a plastic container with a coffee filter inside. Ground coffee beans are packed in the K-Cup and

sealed airtight with a co mbination plastic and foil lid. When the K-Cup is placed in a Keurig brewer, the brewer punctures both the foil lid and the bottom of the K-Cup and forces hot water, un der pressure, through the K-Cup and into a m ug or cup. Initially used only for coffe e, K-Cup varieties now in clude tea, hot chocolate, iced teas and coffee, as well as fruit drinks . Keurig licenses its K-Cup technol ogy to coffee roasters and tea makers such as Defendant Safeway.

10. However, the Safeway Coffee Packet s based on the K-Cup design do not work in Keurig 2.0 mach ines. This is because Keurig equipped its 2.0 machines with special infrared scanners that require coff ee pods printed wit h special ink reflecting certain infrared wavelengths for the scanners to detect. When Plaintiff attempted to put the Safeway Coffee Packets into her K eurig 2.0 machine, the screen showed the following message: "Oops! This pack wasn' t designed for this brewer. Please try one of the hundreds of packs with the Keurig® logo."

11. Defendant's m isrepresentations re garding the com patibility of the Safeway Coffee Packets are materi al to th e purchase decisi on. Reasonable consumers of single use coffee packets base their purchasing decisions on the compatibility of the generic packets with their coffee-brewing machine. Reasonable consumers are entitled to rely on Defendant's packaging and advertising representing that the Safeway Coffee Packets are co mpatible with their Keur ig coffee machines. Consumers have no reasonable means of i ndependently conf irming the veracity of Defendant's representations pri or to purchasing the Safeway Coffee Pack ets. Accordingly, Plaintiffs and Class members, as reasonable consumers, were materially misled by Defendant's representations re garding t he tr ue nat ure of the Safeway Coffee Packets with their Keurig 2.0 coffee machines.

12. Because P laintiff and Class Members purchased a product that does not work as advertised and warranted, Plainti ff and Class Mem bers have suffered injury-in-fact. The Safeway Coffee P ackets hav e no econ omic value and are worthless to users of Keurig 2.0 machines. Plaintiff and Class Members are entitled to a restitution

refund of the purchase price of the Safeway Coffee Packets.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 for the following Class of persons:

> **National Class**: All users of Keurig 2.0 coffee machines, who since December 31, 2014, purchased "Safeway Select" coffee packets in the United States represented to be "for use by owners of Keurig Machines."
>
> **California Sub-Class**: All users of Keurig 2.0 coffee machines, who since December 31, 2014, purchased "Safeway Select" in the State of California coffee packets represented to be 'for use by owners of Keurig Machines'."

Excluded from the National Class and California Sub-Class are all users of Keurig 2.0 coffee machines that returned the Safeway Coffee Packets for a full refund. Also excluded from the National Class and California Sub-Class are all legal entities, Defendant herein and any person, firm, trust, corporation, or other entity related to or affiliated with Defendant, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

14. While the exact number of Class members is unknown to Plaintiff at this time, and will be ascertained through appropriate discovery, Plaintiff is informed and believes that there are tens of thousands of members in the proposed Class. The number of individuals who comprise the Class is so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

15. Plaintiff's claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant's wrongful conduct in violation of the law as complained of herein. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class.

16. Plaintiff will fairly and adequately protect the Class members' interests and have retained counsel competent and experienced in consumer class action

lawsuits and complex litigation. Plaintiff and her counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff is aware of her duties and responsibilities to the Class.

17. Defendant has acted with respect to the Class in a manner applicable to each Class member. Common questions of law and fact exist as to all Class members and predominate over any questions wholly affecting individual Class members. There is a well-defined community of interest in the questions of law and fact involved in the action, which affects all Class members. Among the questions of law and fact common to the Class are, *inter alia*:

(a) Whether Defendant's advertising and packaging of the Safeway Coffee Packets are deceptive, false, and/or misleading;

(b) Whether Defendant's Safeway Coffee Packets are compatible with Keurig 2.0 coffee machines;

(c) Whether Defendant's advertising and sale of the Safeway Coffee Packets constitutes unfair methods of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS. & PROF. CODE §§ 1770 *et seq.*:

(d) Whether Defendant's sale of their Safeway Coffee Packets constitutes misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE § 17500.

(e) Whether Defendant's sale of its Safeway Coffee Packets constitutes "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17200, including:

(i) Whether Defendant's sale of its Safeway Coffee Packets constitutes "unlawful" or "unfair" business practices by violating the public policies set out in CAL. BUS. & PROF. CODE §§ 1770 *et seq.*, and/or CAL. BUS. & PROF. CODE § 17500;

(ii) Whether Defendant's sale of its Safeway Coffee Packets is immoral, unethical, oppressive, unscrupulous or substantially injurious to

consumers;

(iii) Whether Defendant's sale of its Safeway Coffee Packets constitutes an "unfair" business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant's mischaracterization of the compatibility of the Safeway Coffee Packets with Keurig machines constitutes a "fraudulent" business practice under the UCL because members of the public are likely to be deceived;

(f) Whether Defendant breaches the expressed warranties regarding the compatibility of the Safeway Coffee Packets with Keurig coffee machines;

(g) The nature and extent of damages, restitution, equitable remedies, and declaratory and injunctive relief to which Plaintiff and the Class are or may be entitled; and

(h) Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of suit.

18. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

19. Defendant has acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FIRST COUNT
Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -
Untrue, Misleading and Deceptive Advertising
(On Behalf of the California Sub-class)

20. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

21. At all material times, Defendant offered its Safeway Coffee Packets for sale to Plaintiff and other members of the California Sub-Class by way of, *inter alia*, commercial marketing, and advertising, product packaging and labeling, and other promotional materials.

22. These materials, advertisements and other inducements misrepresented and/or omitted the true uses and benefits of Defendant's Safeway Coffee Packets. Said materials, advertisement and other inducements were made within the State of California, and come within the definition of advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq*., in that such promotional materials were intended as inducements to purchase Defendant's Safeway Coffee Packets and are statements disseminated by Defendant to Plaintiff and other members of the California Sub-Class. Defendant knew, or in the exercise of reasonable care should have known, that the statements regarding its Safeway Coffee Packets compatibility with Keurig 2.0 machines were false, misleading and/or deceptive.

23. In furtherance of said advertising plan, Defendant has advertised and marketed product within the State of California, *via* product packaging and labeling, and other promotional materials statements that misleadingly, falsely, and deceptively represent the compatibility of Defendant's Safeway Coffee Packets with Keurig coffee machines. Consumers, including Plaintiff and members of the Class, necessarily and reasonably relied on Defendant's statements regarding the compatibility of the Safeway Coffee Packets with Keurig machines.

24. Plaintiff believed Defendant's representations that the Safeway Coffee Packets were "FOR USE BY OWNERS OF KEURIG MACHINES." Plaintiff and

other members of the California Sub-Class were injured in fact and lost money as a result of Defendant's misconduct. Plaintiff and other members of the California Sub-Class paid for Safeway Coffee Packets that were represented as compatible with Keurig coffee machines, but received products that were not compatible with Keurig 2.0 coffee machines.

25. The above acts of Defendant, in disseminating its misleading, deceptive, and improper statements throughout the State of California, and nationwide, to consumers, including Plaintiff and members of the California Sub-Class, were and are likely to deceive reasonable consumers by obfuscating the true compatibility of Defendant's Safeway Coffee Packets with Keurig 2.0 coffee machines, thus violating CAL. BUS. PROF. CODE §§ 17500, *et seq*.

26. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices, Plaintiff, on behalf of themselves and all others similarly situated, and as appropriate, on behalf of the general public, seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including corrective advertising and the offer of a product refund, correction of Defendant's advertising and packaging, full restitution of all improper revenues and ill-gotten profits derived by Defendant's for its wrongful conduct.

SECOND COUNT
Violation of CAL. CIV. CODE §§ 1750, *et seq*.-
Misrepresentation of a Product's standard, quality, sponsorship, approval, and/or certification
(On Behalf of the California Sub-class)

27. Plaintiff hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

28. Defendant's Safeway Coffee Packets are a "good" as defined by California Civil Code §1761(a).

29. Defendant is a "person" as defined by California Civil Code §1761(c).

30. Plaintiffs and California Sub-Class members are "consumers" within the meaning of California Civil Code §1761(d) because they purchased their Safeway

Coffee Packets for personal, family or household use.

31. The sale of Defendant's Safeway Coffee Packets to Plaintiff and California Sub-Class members is "transaction" as defined by California Civil Code §1761(e).

32. By misrepresenting, mislabeling and misbranding the compatibility of the Safeway Coffee Packets with Keurig coffee machines, Defendant violated California Civil Code § 1770(a)(3), (5), & (7), because Defendant misrepresented the standard, quality, sponsorship, approval, and/or certification of its Safeway Coffee Packets.

33. By misrepresenting, mislabeling and misbranding the compatibility of the Safeway Coffee Packets with Keurig 2.0 coffee machines, Defendant violated California Civil Code § 1770(a)(9), because Defendant advertised that its Safeway Coffee Packets were compatible with Keurig coffee machines when they were not.

34. As a result of Defendant's conduct, Plaintiff and California Sub-Class members were harmed and suffered actual damages as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true compatibility of the Safeway Coffee Packets with Keurig 2.0 coffee machines, Plaintiff and the California Sub-Class would not be misled into purchasing Defendant's Safeway Coffee Packets, which do not work with Keurig 2.0 machines.

35. Plaintiff, on behalf of herself and all other similarly situated California consumers, and as appropriate, on behalf of the general public of the State of California, seeks damages and injunctive relief prohibiting Defendant continuing these unlawful practices pursuant to California Civil Code § 1782(a)(2).

36. Plaintiff provided Defendant with notice of its alleged violations of the Consumer Legal Remedies Act ("CLRA") pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendant correct such violations.

37. If Defendant's fails to respond to Plaintiff's CLRA notice within 30 days, Plaintiff may amend this Complaint to seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, statutory damages,

punitive damages, attorney's fees and cost and any other relief that the Court deems proper.

THIRD COUNT
Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
(On Behalf of the California Sub-Class)

38. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

39. Defendant's conduct is unlawful pursuant to California law.

40. The California Civil Code §1770(a) prohibits representing that goods have characteristics, ingredients, uses, benefits, or quantities, which they do not have. As alleged, the Safeway Coffee Packets do not have the represented compatibility with Keurig machines.

41. The business practices alleged above are unlawful under Business and Professional Code §§ 17500, *et seq*., and California Civil Code §1770(a), each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement, packaging and labelling of the Safeway Coffee Packets.

42. Plaintiff and other members of the California Sub-Class who purchased Defendant's Safeway Coffee Packets suffered substantial injury by virtue of buying a product that misrepresented the compatibility with Keurig coffee machines.

43. Defendant's actions alleged herein violate the laws and public policies of California as set out preceding paragraphs of this Complaint.

44. There is no benefit to consumers or competition by allowing Defendant to deceptively market, advertise, package and label the Safeway Coffee Packets.

45. Plaintiff and California Sub-Class members who purchased Defendant's Safeway Coffee Packets had no way of reasonably knowing that these Packets were not compatible with their Keurig 2.0 coffee machines. Thus, Class members could not have reasonably avoided the injury they suffered.

46. The gravity of the harm suffered by Plaintiff and California Sub-Class

members who purchased Defendant's Safeway Coffee Packets outweighs any legitimate justification, motive or reason for marketing, advertising, packaging and labeling the Safeway Coffee Packets in a deceptive and misleading manner. Accordingly, Defendant's actions are immoral, unethical, unscrupulous and offend the established public policies as set out in the CLRA and FAL, and is substantially injurious to Plaintiff and members of the California Sub-Class.

47. As more fully described above, Defendant misleadingly markets, advertises, packages, and labels the Safeway Coffee Packets as being "FOR USE BY OWNERS OF KEURIG MACHINES," when the Safeway Coffee Packets are not for use by owners of Keurig 2.0 machines. Defendant's misleading marketing, advertisements, packaging, and labeling are likely to, and do, deceive reasonable consumers.

48. Defendant's misleading and deceptive practices caused Plaintiff and other members of the California Sub-Class to purchase Defendant's Safeway Coffee Packets, which are worthless and useless to Plaintiff and other Class members.

49. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices, Plaintiff, on behalf of herself and all others similarly situated, and as appropriate, on behalf of the general public, seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including corrective advertising and offer of product refund, correction of Defendant's advertising and packaging to be not misleading, full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law.

FOURTH COUNT
BREACH OF EXPRESS WARRANTY
(On Behalf of the Nationwide Class)

50. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

51. Plaintiff and each member of the Class formed a contract with Defendant

at the time Plaintiff and the other members of the Class purchased one or more of the Safeway Coffee Packets. The terms of that contract include the promises and affirmations of fact made by Defendant on the packaging of the Safeway Coffee Packets.

52. The Safeway Coffee Packets packaging constitutes express warranties, became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant on the other.

53. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

54. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the products that could provide the benefits promised, *i.e.*, that the Safeway Coffee Packets were "FOR USE BY OWNERS OF KEURIG MACHINES", as alleged above.

55. As a result of Defendant's breach of its contract, Plaintiff and the Class have been damaged in the amount of the purchase price of any and all of the Safeway Coffee Packets they purchased.

FIFTH COUNT
VIOLATION OF 15 U.S.C. §§ 2301 *et seq*. -
Breach of Written Warranty
(On Behalf of the Nationwide Class)

56. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

57. This claim is brought by Plaintiff on behalf of himself and the Class solely for breach of federal law. This claim is not based on any violation of state law.

58. The Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq*., creates a private federal cause of action for breach of a " written warranty" as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

59. The Safeway Coffee Packets are "consumer products" as that term is defined by 15 U.S.C. § 2301(1), as they constitute tangible personal property which is

distributed in commerce and which is normally used for personal, family or household purposes.

60. Plaintiff and members of the Class are "consumers" as defined by 15 U.S.C. § 2301(3), since they are buyers of Safeway Coffee Packets for purposes other than resale.

61. Defendant is an entity engaged in the business of making Safeway Coffee Packets available, either directly or indirectly, to consumers such as Plaintiff and the Class. As such, Defendant is a "supplier" as defined in 15 U.S.C. § 2301(4).

62. Through its labeling, Defendant gave and offered a written warranty to consumers relating to the nature and compatibility of the Safeway Coffee Packets. As a result, Defendant is a "warrantor" within the meaning of 15 U.S.C. § 2301(5).

63. Defendant provided a "written warranty" within the meaning of 15 U.S.C. 2301(6) for the Safeway Coffee Packets by representing that the Safeway Coffee Packets were "FOR USE BY OWNERS OF KEURIG MACHINES". These affirmations of fact were intended to convey to purchasers, a written promise that the Safeway Coffee Packets were free of a particular type of defect (*i.e.*, that they would work in Keurig machines). As such, these written promises and affirmations were part of the basis of Plaintiff's and the Class' bargain with Defendant in purchasing the Safeway Coffee Packets.

64. Defendant breached the written warranty by failing to provide Safeway Coffee Packets as promised. Specifically, the Safeway Coffee Packets are not compatible with Keurig 2.0 coffee machines.

65. Plaintiff and members of the Class were injured by Defendant's failure to comply with its obligations under the written warranty, since Plaintiff and members of the Class paid for products that did not have the promised qualities and nature, did not receive the defect-free Safeway Coffee Packets that were promised to them and that they bargained for.

66. Plaintiff and the Class therefore for this claim seek and are entitled to

recover "dam ages and other legal an d equitable relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as provided in 15 U.S.C. § 2310(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For an order declari ng that this ac tion is properly maintained as a class action and appoint ing Plainti ff as repres entatives for t he Class, and appoi nting Plaintiffs' counsel as Class counsel;

B. That Defendant bear the cost of any notice sent to the Class;

C. For an order awarding Plaintiff and members of the Class actual damages, restitution and/or disgorgement (except as to the CLRA clai m, for which only injunctive relief is sought);

D. For an order enjoining Defendant from continui ng to engage in the unlawful and unfair business acts and practices as alleged herein;

E. For restitution of the funds which were unjustly enriched by Defendant, at the expense of the Plaintiffs and Class Members.

F. For an order awarding Plaintiffs a nd the memb ers of the Class pre- and post-judgment interest;

G. For an order awarding attorneys' fees and costs of suit, includi ng experts' witness fees as permitted by law; and

H. Such other and further relief as this Court may deem just and proper.

///

///

///

///

///

///

///

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

Dated: June 23, 2015

By: /s/ Jeffery R.Krinsk

Jeffrey R. Krinsk, Esq.
jrk@classactionlaw.com
William R. Restis, Esq.
wrr@classactionlaw.com
Trenton R. Kashima, Esq.
trk@classactionlaw.com
550 West C Street, Suite 1760
San Diego, California 92101
Telephone: (619) 238-1333
Facsimile: (619) 238-5425

AFFIDAVIT OF LINDA STADE

I, Linda Stade, declare as follows:

1. I am one of the plaintiffs in the above reference case, and assert a cause of action against Defendant Safeway for violations of the California Consumer Legal Remedies Act. I am a competent adult, over eighteen years of age, and at all times material to this action I have been a citizen of the United States and a resident of the State of California. I am making this declaration in support of my Class Action Complaint attached hereto.

2. I purchased approximately 3 containers of Defendant's Safeway Coffee Packets in the past 6 months. The most recent purchase was made at a Safeway store located in Coronado, California on May 27, 2015. As such, the most recent transaction which gave rise to this Complaint occurred within the County of San Diego. Additionally, Defendant advertises and distributes its Safeway Coffee Packets through San Diego County, thus Defendant conducts substantial business within this County.

3. Accordingly, pursuant to California Code of Civil Procedure, section 1780, the United States District Court for the Southern District of California is the proper venue for Plaintiff's Consumer Legal Remedies Act claims.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct.

Executed on June 21, 2015 in San Diego, California.

Linda Stade

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
LINDA STADE, individually and on behalf of all other similarly situated California residents,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Finkelstein & Krinsk LLP Tel.: (619) 238-1333
550 West C Street, Ste. 1760
San Diego, CA 92101

DEFENDANTS
SAFEWAY, INC., a Delaware Corporation,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

'15CV1381 WQHBLM

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

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

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

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

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

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

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)*:
BUS & PROF §§ 17200 & 17500, CIV CODE § 1770, 15 USC 2301
Brief description of cause:
False and Misleading Product Labeling

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

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

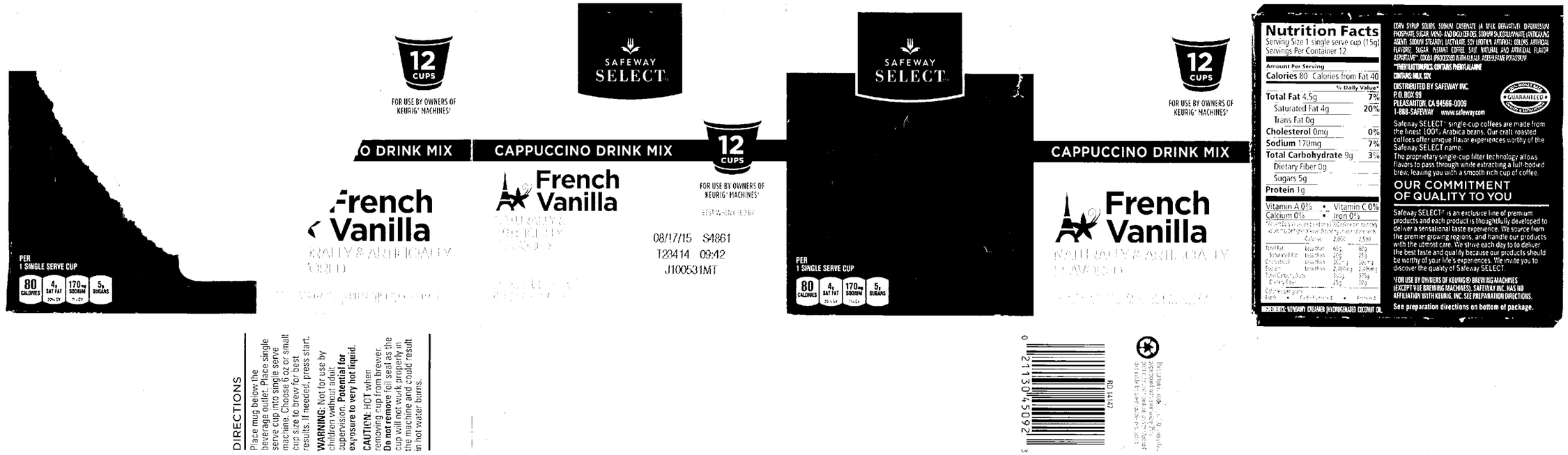
DATE
06/23/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

EXHIBIT A


PER
1 SINGLE SERVE CUP
80 CALORIES
4g SAT FAT
170mg SODIUM
5g SUGARS
12 CUPS
FOR USE BY OWNERS OF KEURIG® MACHINES†
SAFEWAY SELECT
O DRINK MIX
CAPPUCCINO DRINK MIX
French Vanilla
08/17/15 S4861
T23414 09:12
J100531MT
CAPPUCCINO DRINK MIX
French Vanilla
Nutrition Facts
Serving Size 1 single serve cup (15g)
Servings Per Container 12
Amount Per Serving
Calories 80 Calories from Fat 40
% Daily Value*
Total Fat 4.5g 7%
Saturated Fat 4g 20%
Trans Fat 0g
Cholesterol 0mg 0%
Sodium 170mg 7%
Total Carbohydrate 9g 3%
Dietary Fiber 0g
Sugars 5g
Protein 1g
Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 0%
DISTRIBUTED BY SAFEWAY INC.
P.O. BOX 99
PLEASANTON, CA 94566-0009
1-888-SAFEWAY www.safeway.com
GUARANTEED
Safeway SELECT® single-cup coffees are made from the finest 100% Arabica beans. Our craft roasted coffees offer unique flavor experiences worthy of the Safeway SELECT name.
The proprietary single-cup filter technology allows flavors to pass through while extracting a full-bodied brew, leaving you with a smooth rich cup of coffee.
OUR COMMITMENT OF QUALITY TO YOU
Safeway SELECT® is an exclusive line of premium products and each product is thoughtfully developed to deliver a sensational taste experience. We source from the premier growing regions, and handle our products with the utmost care. We strive each day to deliver the best taste and quality because our products should be worthy of your life's experiences. We invite you to discover the quality of Safeway SELECT.
†FOR USE BY OWNERS OF KEURIG® BREWING MACHINES (EXCEPT VUE BREWING MACHINES). SAFEWAY INC. HAS NO AFFILIATION WITH KEURIG, INC. SEE PREPARATION DIRECTIONS.
See preparation directions on bottom of package.
INGREDIENTS: NONDAIRY CREAMER (HYDROGENATED COCONUT OIL,
DIRECTIONS
Place mug below the beverage outlet. Place single serve cup into single serve machine. Choose 6 oz or small cup size to brew for best results. If needed, press start.
WARNING: Not for use by children without adult supervision. Potential for exposure to very hot liquid.
CAUTION: HOT when removing cup from brewer. Do not remove foil seal as the cup will not work properly in the machine and could result in hot water burns.
RD 14147
0 21130 44092 3

SAFEWAY SELECT

CAPPUCCINO DRINK MIX

Hazelnut

NATURALLY & ARTIFICIALLY FLAVORED

PER 1 SINGLE SERVE CUP

70 CALORIES | 4g SAT FAT 20% DV | 150mg SODIUM 6% DV | 6g SUGARS

12 CUPS

FOR USE BY OWNERS OF KEURIG® MACHINES*

Nutrition Facts

Serving Size 1 single serve cup (15g)
Servings Per Container 12

Amount Per Serving	
Calories 70 Calories from Fat 35	
	% Daily Value*
Total Fat 4g	6%
Saturated Fat 4g	20%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 150mg	6%
Total Carbohydrate 9g	3%
Dietary Fiber 0g	
Sugars 6g	
Protein 0g	

Vitamin A 0%	Vitamin C 0%
Calcium 0%	Iron 0%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

INGREDIENTS: NONDAIRY CREAMER (HYDROGENATED COCONUT OIL, CORN SYRUP SOLIDS, SODIUM CASEINATE (A MILK DERIVATIVE), DIPOTASSIUM PHOSPHATE, SUGAR, MONO- AND DIGLYCERIDES, SIMILAR SUCCINYLATE (ANTICAKING AGENT), SODIUM STEAROYL LACTYLATE, SOY LECITHIN, ARTIFICIAL COLORS, ARTIFICIAL FLAVORS) SUGAR, INSTANT COFFEE, NATURAL AND ARTIFICIAL FLAVOR, SALT, COCOA (PROCESSED WITH ALKALI), SUCRALOSE.
CONTAINS: MILK, SOY.

DISTRIBUTED BY SAFEWAY INC.
P.O. BOX 99
PLEASANTON, CA 94566-0009
1-888-SAFEWAY www.safeway.com

100% SATISFACTION GUARANTEED

Safeway SELECT® single-cup coffees are made from the finest 100% Arabica beans. Our craft-roasted coffees offer unique flavor experiences worthy of the Safeway SELECT name.

The proprietary single-cup filter technology allows flavors to pass through while extracting a full-bodied brew, leaving you with a smooth rich cup of coffee.

OUR COMMITMENT OF QUALITY TO YOU

Safeway SELECT® is an exclusive line of premium products and each product is thoughtfully developed to deliver a sensational taste experience. We source from the premier growing regions, and handle our products with the utmost care. We strive each day to to deliver the best taste and quality because our products should be worthy of your life's experiences. We invite you to discover the quality of Safeway SELECT.

*FOR USE BY OWNERS OF KEURIG® BREWING MACHINES (EXCEPT VUE BREWING MACHINES). SAFEWAY INC. HAS NO AFFILIATION WITH KEURIG, INC. SEE PREPARATION DIRECTIONS.

See preparation directions on bottom of package.

0 21130 45093 0

RD 1420B

Recyclable where facilities exist. Check locally. Separate components for recycling. Not manufactured with any natural rubber latex. Made in the USA from domestic and imported materials.

DIRECTIONS

Place mug below the beverage outlet. Place single serve cup into single serve machine. Choose 6 oz or small cup size to brew for best results. If needed, press start.

WARNING: Not for use by children without adult supervision. Potential for exposure to very hot liquid.

CAUTION: HOT when removing cup from brewer. **Do not remove** foil seal as the cup will not work properly in the machine and could result in hot water burns.

FEB 22 16 S4061
T05:15 13:14
J4:8:NC