

LAW OFFICES OF RONALD A. MARRON, APLC

RONALD A. MARRON (SBN 175650)

ron@consumersadvocates.com

SKYE RESENDES (SBN 278511)

skye@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

[Additional counsel on signature page]

Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TAYLOR ELY, on behalf of himself,
all others similarly situated and the
general public,

Plaintiff,

v.

F. GAVIÑIA & SONS, INC., a
California Corporation,

Defendant.

Case No.:

Filed:

CLASS ACTION

COMPLAINT FOR:

- 1. VIOLATION OF CALIFORNIA
CONSUMERS LEGAL
REMEDIES ACT [CIV. CODE §§
1750, *et seq.*]**
- 2. VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW
[BUS. & PROF. CODE §§ 17200,
et seq.]**
- 3. VIOLATION OF CALIFORNIA
FALSE ADVERTISING LAW
[BUS & PROF. CODE §§ 17500,
et seq.]**
- 4. BREACH OF EXPRESS
WARRANTY**
- 5. BREACH OF IMPLIED
WARARANTY OF
MERCHANTABILITY**
- 6. BREACH OF MAGNUSON-
MOSS WARRANTY ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff, on behalf of himself, all others similarly situated, and the general
 2 public (“Plaintiff”), alleges against Defendant F. Gaviña & Sons, Inc. (“Gavinia”
 3 or “Defendant”) the following upon his own knowledge, or where there is no
 4 personal knowledge, upon information and belief and the investigation of his
 5 counsel:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. §
 8 1332(d)(2)(A), as amended by the Class Action Fairness Act of 2005, because the
 9 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
 10 \$5,000,000.00 and is a class action where more than two-thirds of the members of
 11 the class are citizens of a state different from the Defendant. This Court has
 12 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

13 2. Personal jurisdiction is derived from the fact that the Defendant
 14 conducts business within the State of California and within this judicial district.

15 3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2)
 16 because many of the acts and transactions, including the purchases and sales giving
 17 rise to this action, occurred in this district and because Defendant:

- 18 (i) is authorized to conduct business in this district and has
- 19 intentionally availed itself of the laws and markets within this
- 20 district through the promotion, marketing, distribution and sale
- 21 of its products in this district;
- 22 (ii) does substantial business in this district;
- 23 (iii) advertises to consumers residing in this district; and,
- 24 (iv) is subject to personal jurisdiction in this district.

25 **THE PARTIES**

26 4. At all times relevant to this matter, Plaintiff Taylor Ely was a resident
 27 of Windsor, California.

1 5. On information and belief, at all times relevant to this matter,
2 Defendant F. Gaviña & Sons, Inc. was a California corporation that maintains its
3 principal place of business, corporate headquarters, and residence in Vernon,
4 California.

5 6. Members of the putative class reside in California and other states in
6 the United States.

7 7. Defendant is the manufacturer, marketer, and seller of coffee
8 products.

9 8. Defendant produces, markets, and sells its coffee products throughout
10 the United States, including California.

11 9. Plaintiff is informed and believes and thereon alleges that at all times
12 herein mentioned the Defendant and Defendant's employees were the agents,
13 servants and employees of the Defendant, acting within the purpose and scope of
14 that agency and employment.

15 10. In addition to selling its Products on the shelf in major retail stores,
16 Defendant sells its Products directly to any consumer in the United States online
17 via its website, www.donfranciscos.com and www.shopdonfranciscos.com.
18 Defendant also distributes its Products to online third party retailers for sale
19 directly to consumers through online transactions, and to third party distributors for
20 sale directly to consumers in each state in the United States.

21 **BACKGROUND FACTS**

22 11. Defendant manufactures, advertises, markets, and sells varieties of
23 flavored coffee, branded under the Don Francisco name brand, in cans, bags, and
24 single-serving pods (collectively the "Products").

25 12. The Products are advertised and labeled as containing flavored
26 coffees, for example, "Cinammon Hazelnut" or "Vanilla Nut".
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1 13. Under California law, made applicable in this state through the State
2 of California's incorporation of federal Food, Drug and Cosmetics Act ("FDCA")
3 and the Food and Drug Administration's ("FDA") implementing regulations, each
4 of these flavors as identified on the front label of the Products is referred to as the
5 "characterizing flavor" of the product. 21 CFR § 101.22.

6 14. Pursuant to California and FDA regulations, a product's front label
7 must disclose explicitly and prominently whether the product's characterizing
8 flavor is created through the use of natural or artificial ingredients. The words
9 "artificial" or "artificially flavored" must appear with the name of the
10 characterizing flavor in the type size specified and with no intervening text. *Id.*

11 15. Defendant's Products' characterizing flavors are not created by use of
12 the natural ingredients suggested by the Products' labels. Each Products'
13 respective ingredient list discloses that it is instead flavored with compounds
14 identified as "natural and/or artificial flavor." These Products in fact owe their
15 characterizing flavors to Defendant's covert use of artificial flavors.

16 16. The front of the Products' packaging does not accurately or lawfully
17 disclose this critical fact, as required by law.

18 17. Instead, Defendant's entire packaging, labeling, and marketing
19 scheme is intended to give consumers the false or deceptive impression that they
20 are buying a premium, naturally-flavored, "gourmet" product.

21 18. Defendant uses phrases like, "VANILLA NUT" superimposed over a
22 photograph of a vanilla bean pod and vanilla bean flower, and phrases such as
23 "tantalizing aromas of creamy vanilla & freshly roasted nuts," "Lively Flavors:
24 Don Francisco's has discovered a way to balance the taste of freshly-roasted coffee
25 with the bouquet of lively flavorings, you'll discover that the appetizing aromas of
26 roasted nuts, zesty cinnamon, butterscotch or creamy vanilla will bring your coffee
27 experience to new heights of satisfaction," and other representations on the
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Product's front label to suggest to the consumer that this is a superior product with premium, natural ingredients.

19. In fact, the Products are inexpensive coffees with added artificial flavoring.

20. Plaintiff, who was deceived by Defendant's unlawful conduct, brings this action to remedy Defendant's unlawful acts.

21. Plaintiff purchased and consumed the Cinnamon Hazelnut and Vanilla Nut Products multiple times in California during the Class Period defined herein.

22. On behalf of the class as defined herein, Plaintiff seeks an order compelling Defendant to, inter alia: (1) cease manufacturing, distributing, and selling the Product in packaging that fails to comply with FDA regulations and California consumer protection laws; (2) conduct a corrective advertising campaign, including notice to the class; (3) destroy all misleading and deceptive packaging materials; (4) award Plaintiff and other Class-members restitution; and (5) pay Plaintiff's costs, expenses, and attorney fees.

FACTS

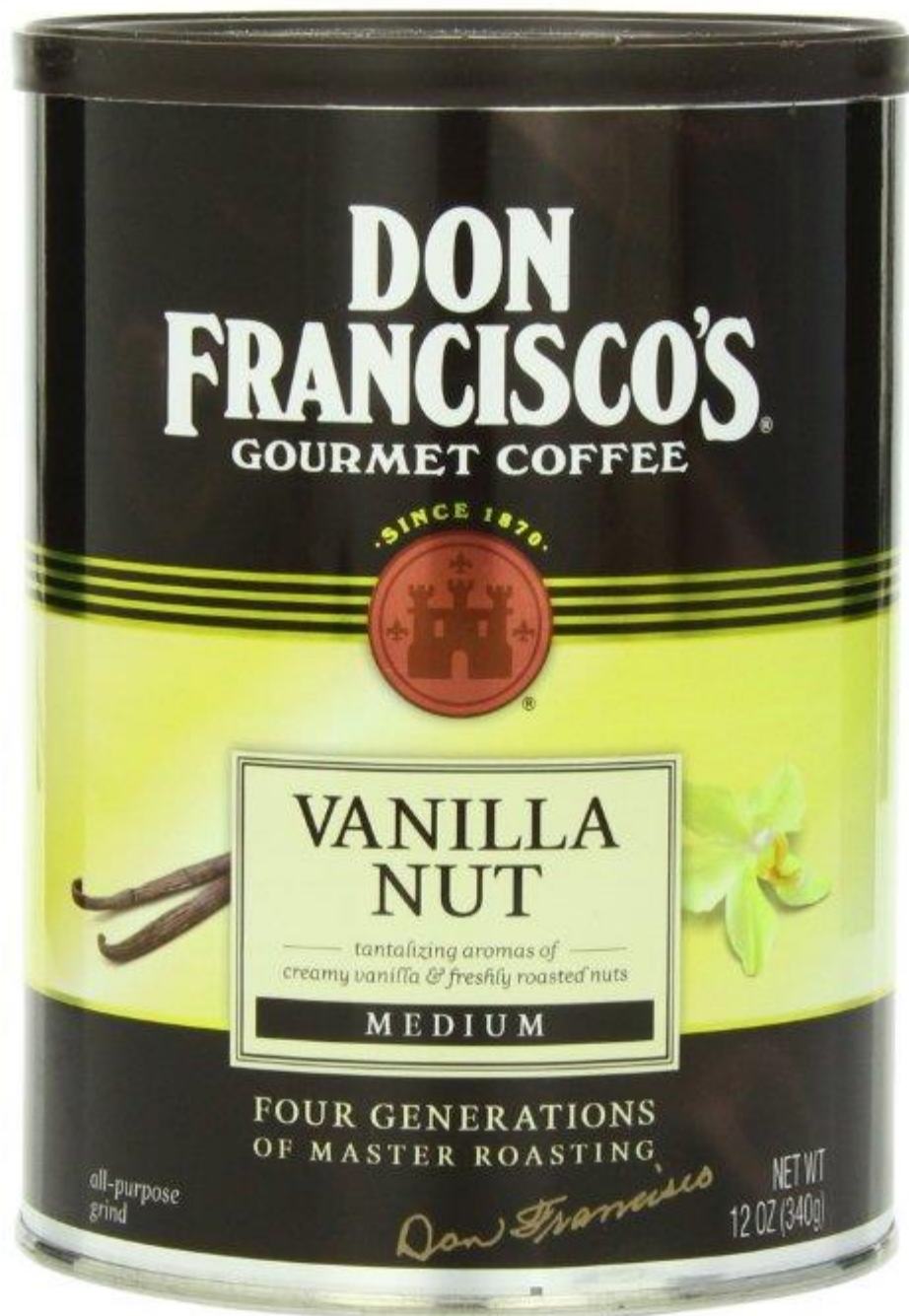
23. This is a consumer protection class action lawsuit on behalf of purchasers of Defendant's flavored coffees under the Don Francisco's brand name (collectively, the "Products").

24. Defendant manufactures, advertises, distributes and sells its Products in major retail stores throughout California and each state in the United States, including directly to consumers online.

25. Defendant primarily advertises and promotes its Products through labeling claims on the front of the Products' package. Label descriptions on the Products' packaging, taken as a whole, represent that there are various benefits and characteristics to the Products. See Ex. 1 for exemplars of some of the Products' canned packaging.

1 26. Defendant's advertising of its Products is also the subject of an
2 extensive and comprehensive marketing campaign in various media including the
3 Internet.

4 27. During the class period, Plaintiff was exposed to and saw Defendant's
5 claims about the Cinnamon Hazelnut and Vanilla Nut Products, which expressly
6 and impliedly asserted that the Products contained natural flavors as their
7 characterizing flavors, as the following photographs indicate.



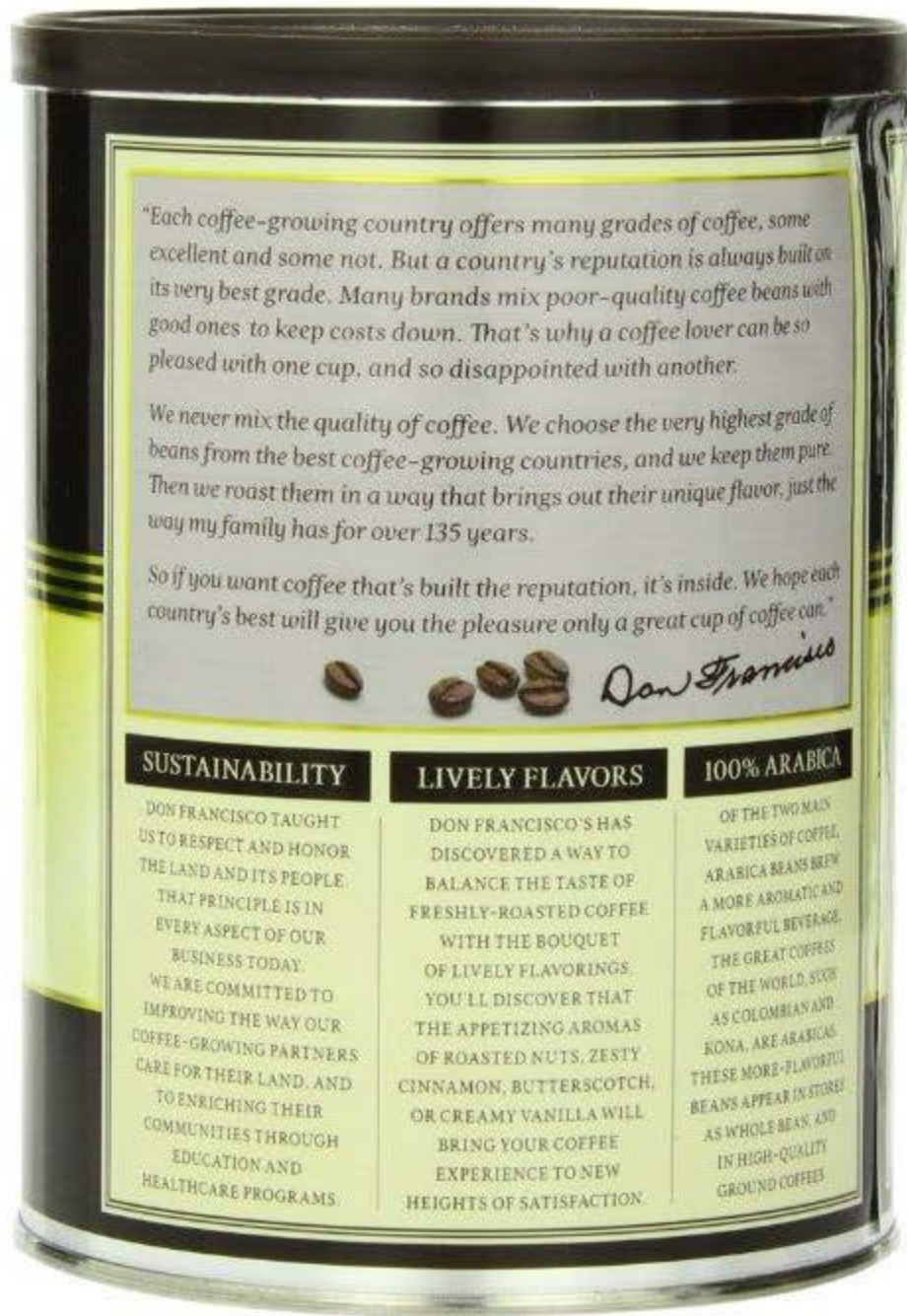


28. During the Class Period, Plaintiff routinely purchased Defendant's Cinammon Hazelnut and Vanilla Nut Products at Big John's Market in Healdsburg and other similar grocery stores near his home in Windsor, California for approximately \$15.00 for each 12-ounce ground coffee can purchase. Plaintiff is a consumer as described herein.

1 29. In purchasing Defendant’s flavored coffee Products, Plaintiff relied
2 upon the various representations Defendant made on the Product’s label, including
3 but not limited to: “VANILLA NUT,” “CINNAMON HAZELNUT,” “the sweet
4 zest of cinnamon sticks and smooth aroma of hazelnuts,” “tantalizing aromas of
5 creamy vanilla & freshly roasted nuts,” “Lively Flavors: Don Francisco’s has
6 discovered a way to balance the taste of freshly-roasted coffee with the bouquet of
7 lively flavorings, you’ll discover that the appetizing aromas of roasted nuts, zesty
8 cinnamon, butterscotch or creamy vanilla will bring your coffee experience to new
9 heights of satisfaction,” plus large photographs of a vanilla bean pod, vanilla bean
10 flower, photographs of cinnamon sticks and actual hazelnuts superimposed behind
11 the front of pack labeling representations, to suggest to the consumer that these
12 were superior Products with premium, natural ingredients and natural flavors. *See*
13 *also* Ex. 1.

14 30. Defendant’s Products, however, only reveal on the back of the
15 packaging, in small print and unconnected to the front-of-pack images and words,
16 where a consumer was not likely to notice, that the Products actually contain
17 “natural and/or artificial flavors.” The use of the words “and/or” indicate that
18 Defendant itself does not know if it is including actual or artificial flavoring in the
19 Products on a regular basis, or does know but feels it does not have to provide the
20 truth to consumers.
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1 31. Generally, Defendant advertises its Products through
2 misrepresentations and omissions, as discussed above.

3 32. In purchasing the Products, Plaintiff and consumers reasonably relied
4 upon the various representations Defendant makes on the Product's packaging
5 label and its prevalent advertising campaign, including online advertising, as
6 described herein. *See* Ex. 1; Ex. 2 for picture of one of Defendant's web site
7 pages.

8 33. Defendant knows there may be zero natural flavors in its Products,
9 and has recklessly labeled all the back packaging of its flavored ground coffees
10 Products as containing "natural and/or artificial flavors" rather than distinctly
11 informing consumers which coffees do not contain vanilla bean pods, natural
12 cinnamon, natural hazelnut, and the like.

13 34. Accordingly, the Products are unlawfully, falsely or deceptively
14 advertised to consumers.

15 35. At all times relevant herein, Defendant had a duty to disclose
16 additional information to purchasing consumers, to correct all misunderstandings
17 its omissions and misrepresentations created in the minds of those consumers.

18 36. Don Francisco's flavored coffee Products are a popular, widely selling
19 brand throughout the United States. Hence, Defendant's unfair and deceptive
20 practices have enriched them by millions of dollars, at the expense of hundreds of
21 thousands of Americans.

22 37. Absent the material misrepresentations and omissions described
23 herein, which are material to an average consumer, Plaintiff and other consumers
24 would not have purchased the Products or would not have paid the price they did.

25 38. In purchasing Products that were falsely or deceptively advertised,
26 Plaintiff suffered injury in fact in the form of the lost purchase price of the
27 Products.

1 39. Plaintiff seeks justice for himself and similarly-situated consumers of
2 the Products, by means of this action to enjoin the ongoing deceptive practices
3 described herein.

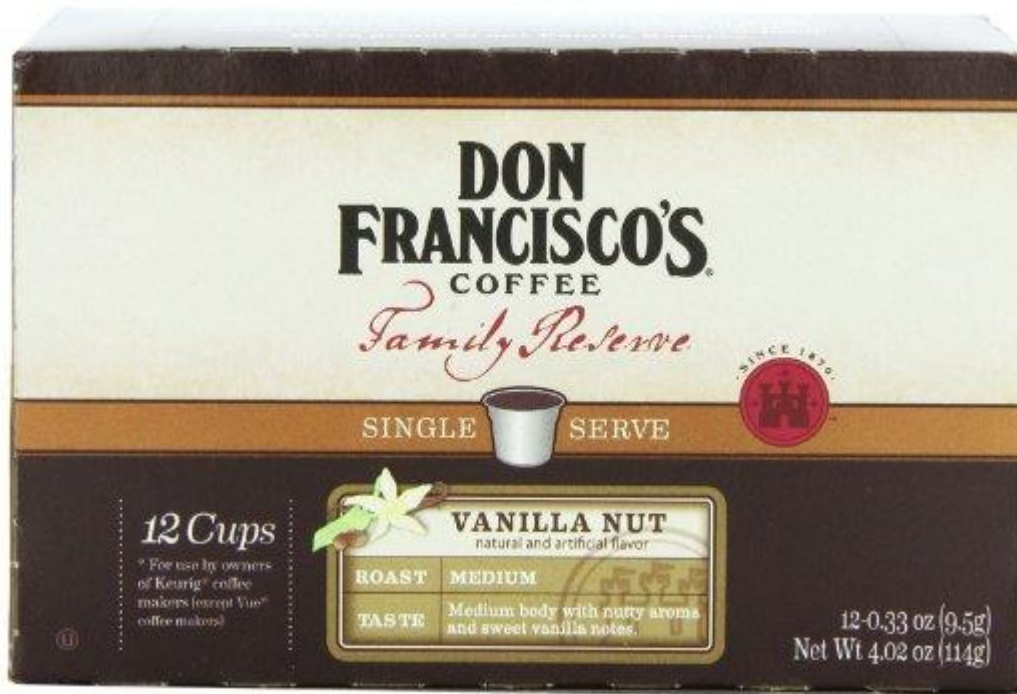
4 40. Defendant's marketing and promotion of the Products was supported
5 by false and misleading claims containing material omissions and
6 misrepresentations.

7 41. When purchasing the Products, Plaintiff and the class were seeking
8 coffee goods that would provide the benefits and characteristics that Defendant
9 marketed, promised, represented and warranted.

10 42. Plaintiff and the class purchased the Products believing they had the
11 qualities they sought, based on the Products' deceptive or false labeling, but the
12 Products were actually unacceptable to them as they did not possess the benefits,
13 endorsements, proof, and characteristics as advertised.

14 43. Moreover, like all reasonable consumers and members of the class,
15 Plaintiff considers a label's compliance with the law a material factor in his
16 purchasing decisions. Plaintiff is generally aware that the federal government
17 carefully regulates food products and therefore has come to trust that information
18 conveyed on packaged food product labels is truthful, accurate, complete, and fully
19 in accordance and compliance with the law. As a result, Plaintiff trusts he can
20 compare competing products on the basis of their labeling claims, to make a
21 purchasing decision.

22 44. Like all reasonable consumers and members of the classes, Plaintiff
23 would not purchase a food product he knew was misbranded under federal law, *see*
24 21 U.S.C. § 343, which the federal government prohibits selling, *id.* § 331, and
25 which carries with its sale criminal penalties, *id.* § 333. Plaintiff could not trust
26 that the label of a product misbranded under federal law is truthful, accurate and
27 complete.



53. The above picture of the single serve “pod” packaging for “Family Reserve” flavored coffee shows that “natural and artificial flavor” is properly included on the front, below the “Vanilla Nut” advertising, in a font size that appear to comply with California law and FDA implemental regulations. But Defendant does not do this for its canned or bagged flavored ground coffee Products.

54. Other competing manufacturers, offering products whose labels suggest as Defendant’s do that their products are naturally flavored, truly are flavored only with natural ingredients.

55. Defendant, however, elects instead to conceal their use of artificial flavoring in the Products in order to deceive a certain targeted audience of consumers, unlawfully cut costs and increase profits, and compete unfairly and unlawfully in the marketplace.

56. Defendant’s conduct therefore also injures competing manufacturers of flavored coffees, both those that are artificially flavored and those that are

1 naturally flavored, that do not engage in the same unlawful, unfair, and immoral
 2 behavior. All of these manufacturers compete for market share and limited retail
 3 shelf space for such products. Defendant's competitors do so lawfully. Defendant
 4 does not.

5 **DELAYED DISCOVERY**

6 57. Plaintiff and class members did not discover that Defendant's labeling
 7 of the Products was false, deceptive, or misleading until approximately March
 8 2016, when they learned the Products contained artificial flavoring. Until this
 9 time, they lacked knowledge regarding the facts of their claims against Defendant.

10 58. Plaintiff and the class consists of reasonably diligent consumers who
 11 exercised reasonable diligence in their purchase, use, and consumption of the
 12 Products. Nevertheless, they would not have been able to discover Defendant's
 13 deceptive practices and lacked the means to discover them given that, like nearly
 14 all consumers, they rely on and are entitled to rely on a manufacturer's obligation
 15 to label its products in compliance with federal regulations and state law.

16 59. Furthermore, Defendant's labeling practices and non-disclosures—in
 17 particular, failing to disclose that the Products contain artificial flavoring—
 18 impeded Plaintiff's and Class members' abilities to discover the deceptive and
 19 unlawful labeling of the Product throughout the Class Period.

20 **CLASS ACTION ALLEGATIONS**

21 60. Pursuant to Rules 23(a), (b)(3) and/or (b)(2) of the Federal Rules of
 22 Civil Procedure, Plaintiff brings this action on behalf of himself and a California
 23 consumer class, provisionally defined as follows:

24 All purchasers of Defendant's flavored ground Don Francisco coffee
 25 Products, including, but not limited to, the following flavors: Vanilla
 26 Nut, Cinnamon Hazelnut, Hawaiian Hazelnut, Caramel Cream,
 27 Butterscotch Toffee, Caramel Spiced Rum, Frosted Oatmeal Cookie,
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1 L'Orange, Butterscotch, Chocolate, Chocolate Raspberry, Coconut
2 Cream, Cookies & Cream, Crème D'Irlande, French Caramel, French
3 Vanilla, Hazelnut Cream, Macadamia Nut, Nutty Doodle, Vienna
4 Cinammon, in all size and package iterations, for personal or
5 household use and not for resale, in California from May 18, 2006 to
6 the present (the "Class Period"). Excluded from the consumer class
7 are governmental entities, the Defendant, any entity in which the
8 Defendant has a controlling interest, its employees, officers,
9 directors, legal representatives, heirs, successors and wholly or partly
10 owned subsidiaries or affiliated companies, including parent
11 corporations, class counsel and their employees; and the judicial
12 officers and their immediate family members and associated court
13 staff assigned to this case.

14 61. The proposed Class is so numerous that individual joinder of all its
15 members is impracticable. Due to the nature of the trade and commerce involved,
16 however, Plaintiff believes the total number of Class members is at least in the
17 hundreds of thousands of persons in the State of California and other states in the
18 United States. While the exact number and identities of the Class members are
19 unknown at this time, such information can be ascertained through appropriate
20 investigation and discovery. The disposition of the claims of the Class members in
21 a single class action will provide substantial benefits to all parties and to the Court.

22 62. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on
23 grounds generally applicable to the Class, thereby making final injunctive relief or
24 corresponding declaratory relief and damages as to its Products appropriate with
25 respect to the Class as a whole. In particular, Defendant has failed to disclose the
26 true nature of the Products being marketed and distributed, as detailed herein.
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63. There is a well-defined community of interest in the questions of law and fact involved affecting the Plaintiff and the Class and these common questions of fact and law include, but are not limited to, the following:

- a. Whether the claims discussed above are true, misleading, or reasonably likely to deceive;
- b. Whether Defendant's alleged conduct violates public policy;
- c. Whether the alleged conduct constitutes violations of the laws asserted herein;
- d. Whether Defendant engaged in false or misleading advertising;
- e. Whether the Plaintiff and Class members are entitled to declaratory and injunctive relief.

64. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by the Defendant's common course of conduct since they all relied on Defendant's representations concerning its Products and purchased the Products based on those representations.

65. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation in general and food labeling claims, in particular. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

66. Plaintiff and the members of the Class suffered and will continue to suffer harm as a result of the Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the

individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

67. Adjudication of individual Class members' claims with respect to the Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT

California Civil Code §§ 1750, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

68. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

69. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff and the members of the Class are consumers as defined by California Civil Code § 1761(d). The Products are goods within the meaning of the Act.

70. Defendant violated and continue to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions

1 with Plaintiff and the Class which were intended to result in, and did result in, the
2 sale of the Products:

3 • Representing that [the Products have]...characteristics, ingredients,
4 uses, benefits or quantities which [the Products] do not have. (Civ. Code, § 1770,
5 subd. (a) (5).)

6 • Representing that [the Products] are of a particular standard, quality or
7 grade... if they are of another. (Civ. Code, § 1770, subd. (a) (7).)

8 • Advertising [Products] ...with intent not to sell them as advertised.
9 (Civ. Code, § 1770, subd. (a) (9).)

10 • Representing that [the Products] have been supplied in accordance
11 with a previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

12 71. Defendant violated the Act by representing through advertising of the
13 Products as described above, when they knew, or should have known, that the
14 representations and advertisements were false or misleading.

15 72. Plaintiff and members of the Class reasonably relied upon the
16 Defendant's representations as to the quality and attributes of the Products.

17 73. Plaintiff and other members of the Class were deceived by
18 Defendant's representations about the quality and attributes of the Products,
19 including but not limited to the purported ingredients in the Products, taken as a
20 whole. Plaintiff and other Class members would not have purchased the Products,
21 or not paid as much for them had they known the Defendant's claims were untrue,
22 and had they known the true nature of the Products.

23 74. Pursuant to section 1782 *et seq.* of the Act, Plaintiff notified the
24 Defendant in writing by certified mail of the particular violations of § 1770 of the
25 Act as to their Products and demanded the Defendant rectify the problems
26 associated with the actions detailed above and give notice to all affected consumers
27 of its intent to so act. Defendant's wrongful business practices regarding the
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Products constituted, and constitute, a continuing course of conduct in violation of the California's Consumers Legal Remedies Act since Defendant are still representing that the Products have characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class. A copy of Plaintiff's letter is attached as **Exhibit 3** hereto.

75. Pursuant to California Civil Code §§ 1780(a), 1782(d), Plaintiff and the Class seek an order of this Court enjoining the Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law.

76. Plaintiff will amend his Complaint to allege damages and other remedies available to him under the CLRA following the expiration of the time period specified under the Act if Defendant does not modify its wrongful acts and practices with respect to their Products.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

California Business and Professions Code §§ 17200, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

77. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

78. California's Unfair Competition Law, Business and Professions Code § 17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has engaged in unfair, deceptive, untrue and misleading advertising in violation of the UCL.

79. The UCL also prohibits any "unlawful... business act or practice." Defendant violated the UCL's prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts, as set forth more fully herein, and by violating among others, California Civil Code

1 §§ 1572, 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§
2 109875, *et seq.* (“Sherman Law”), Cal. Bus. & Prof. Code §§ 12601, *et seq.* (“Fair
3 Packaging and Labeling Act”), California Commercial Code § 2313(1), and the
4 common law. Such conduct is ongoing and continues to this date.

5 80. Defendant’s conduct is unlawful because it violates 21 C.F.R. §
6 101.22(c) (as incorporated in California under the Sherman Law, which mirrors the
7 federal Food, Drug and Cosmetic Act and all its implementing regulations), which
8 requires all foods containing artificial flavoring to include:

9 A statement of artificial flavoring . . . [which] shall be placed on the food or
10 on its container or wrapper, or on any two or all three of these, as may be
11 necessary to render such a statement likely to be read by the ordinary person
12 under customary conditions of purchase and use of such food.

13 81. Defendant’s conduct is unlawful because it violates, *inter alia*, 21
14 C.F.R. § 101.22(c) and 21 C.F.R. § 101.22(i) (as incorporated into California law
15 via the Sherman Law), which requires all food products for which artificial
16 flavoring provides a characterizing flavor to disclose this fact prominently on the
17 product’s front label.

18 82. Defendant further violates the implementing regulation, 21 C.F.R. §
19 1.21 and California law, because the Product’s front label fails to reveal material
20 facts, namely that the Product’s characterizing flavor is created by artificial
21 flavoring, which is false and deceptive under the California Sherman Law and
22 California consumer fraud laws, such as the CLRA.

23 83. Defendant’s conduct is further unlawful as it violates California food
24 labeling regulations, *inter alia*, 21 C.F.R. § 102.5 (as incorporated in California via
25 the Sherman Law), because the Products’ labels do not include:

26 a statement of the “presence or absence of any characterizing ingredient(s)
27 or component(s) . . . when the presence or absence of such ingredient(s) or
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1 component(s) in the food has a material bearing on price or consumer
2 acceptance or when the labeling or the appearance of the food may
3 otherwise create an erroneous impression that such ingredient(s) or
4 component(s) is present when it is not, and consumers may otherwise be
5 misled about the presence or absence of the ingredient(s) or component(s) in
6 the food. 21 C.F.R. § 102.5(c).

7 84. Plaintiff and the Class reserve the right to allege other violations of
8 law which constitute other unlawful business acts or practices.

9 85. California Business and Professions Code § 17200 also prohibits any
10 “unfair... business act or practice.”

11 86. Defendant’s acts, omissions, misrepresentations, practices and
12 nondisclosures as alleged herein also constitute “unfair” business acts and practices
13 within the meaning of the UCL in that its conduct is substantially injurious to
14 consumers, offends public policy, and is immoral, unethical, oppressive, and
15 unscrupulous as the gravity of the conduct outweighs any alleged benefits
16 attributable to such conduct. Such conduct is ongoing and continues to this date.

17 87. Plaintiff alleges violations of consumer protection, unfair competition
18 and truth in advertising laws in California and other states resulting in harm to
19 consumers. Plaintiff asserts violation of the public policy of engaging in false and
20 misleading advertising, unfair competition and deceptive conduct towards
21 consumers. This conduct constitutes violations of the unfair prong of the UCL.
22 Such conduct is ongoing and continues to this date.

23 88. There were reasonably available alternatives to further Defendant’s
24 legitimate business interests, other than the conduct described herein. For
25 example, Defendant’s competitors lawfully label their flavored coffees, as
26 discussed herein.

27 89. The UCL also prohibits any “fraudulent business act or practice.”
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90. Defendant's claims, nondisclosures (i.e., omissions), and misleading statements, as more fully set forth above, were false, misleading and/or likely to deceive the consuming public within the meaning of the UCL. Such conduct is ongoing and continues to this date.

91. Defendant's conduct caused and continues to cause substantial injury to Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact as a result of Defendant's unfair conduct.

92. Defendant has thus engaged in unlawful, unfair and fraudulent business acts and practices and false advertising, entitling Plaintiff and the Class to injunctive relief against Defendant, as set forth in the Prayer for Relief.

93. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an order requiring Defendant to immediately cease such acts of unlawful, unfair and fraudulent business practices and requiring Defendant to engage in a corrective advertising campaign.

94. Plaintiff and the class also seek an order for the disgorgement and restitution of all monies from the sale of Defendant's Products, which were unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW

California Business and Professions Code §§ 17500, et seq.

(On Behalf of Plaintiff and the Class, as Against Defendant)

95. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

96. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased the Products in reliance upon

1 Defendant's marketing claims. The Products were not as advertised, nor did they
2 contain the promised benefits and qualities sought.

3 97. Defendant's business practices as alleged herein constitute unfair,
4 deceptive, untrue, and misleading advertising pursuant to California Business and
5 Professions Code §§ 17500, *et seq.* because Defendant has advertised their
6 Products in a manner that is untrue or misleading, or that is known to Defendant to
7 be untrue or misleading.

8 98. Defendant's wrongful business practices have caused injury to
9 Plaintiff and the Class.

10 99. Pursuant to section 17535 of the California Business and Professions
11 Code, Plaintiff and the Class seek an order of this court enjoining the Defendant
12 from continuing to engage in deceptive business practices, false advertising, and
13 any other act prohibited by law, including those set forth in the complaint.

14 100. Plaintiff and the Class also seek an order for the disgorgement and
15 restitution of all monies from the sale of Defendant's Products, which were
16 unjustly acquired through acts of unlawful, unfair, deceptive and/or fraudulent
17 competition.

18 **FOURTH CAUSE OF ACTION**

19 **BREACH OF EXPRESS WARRANTY**

20 **(On Behalf of Plaintiff and all Class Members, as Against Defendant)**

21 101. Plaintiff repeats, realleges and incorporates by reference each and
22 every allegation contained above as if fully set forth herein.

23 102. On the Products' labels and through their marketing campaign as
24 described above, Defendant made affirmations of fact or promises, or description
25 of goods, which formed "part of the basis of the bargain" at the time of purchase.
26 *See, e.g.,* Ex. 1.

1 103. Specifically as to the Vanilla Nut and Cinnamon Hazelnut Products,
2 Defendant warranted that the Products contained “VANILLA NUT,” and
3 “CINNAMON HAZELNUT,” and also represented the Products were created
4 through “the sweet zest of cinnamon sticks and smooth aroma of hazelnuts,”
5 “tantalizing aromas of creamy vanilla & freshly roasted nuts,” “Lively Flavors:
6 Don Francisco’s has discovered a way to balance the taste of freshly-roasted coffee
7 with the bouquet of lively flavorings, you’ll discover that the appetizing aromas of
8 roasted nuts, zesty cinnamon, butterscotch or creamy vanilla will bring your coffee
9 experience to new heights of satisfaction,” all of which led Plaintiff and the Class
10 to believe the Products contained natural flavors to evoke such advertising claims.

11 104. In addition, Defendant warranted and represented to the Plaintiff and
12 the Class that the Vanilla Nut and Cinnamon Hazelnut Products possessed certain
13 natural characteristics, quality and benefits through the use of large photographs of
14 a vanilla bean pod, vanilla bean flower, photographs of cinnamon sticks and actual
15 hazelnuts superimposed behind the front of pack labeling representations, to
16 suggest to the consumer that these were superior Products with these premium,
17 natural ingredients.

18 105. The warranties were breached because the Products did not live up to
19 their warranties, and that breach caused injury in the form of the lost purchase
20 price for the Products. *See* Cal. Com. Code § 2313(1); *see also* *Zwart v. Hewlett-*
21 *Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online
22 assertions can create warranties).

23 106. As a result of Defendant’s breach of their warranties, Plaintiff and the
24 Class have been damaged in the amount of the purchase price of the Products they
25 purchased.
26
27
28

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(On Behalf of Plaintiff and the Class, as Against Defendant)

107. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

108. Defendant, through their acts and omissions as set forth herein, in their sale, marketing and promotion of their Products, made representations to Plaintiff and the members of the Class that their Products provided the represented benefits and qualities as described herein.

109. Plaintiff and the Class bought the Products manufactured, advertised and sold by Defendant.

110. Defendant is a merchant with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied warranty that those goods were merchantable.

111. However, Defendant breached that warranty implied in the sale of goods in that their Products do not provide the purported benefits and qualities, as set forth in detail herein.

112. As a result of Defendant's conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendant to be merchantable in that they did not conform to the promises and affirmations made on the container or label of the goods.

113. Plaintiff and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,

15 U.S.C. §§ 2301, *et. seq.*

(On Behalf of Plaintiff and the Class, as Against Defendant)

114. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

115. Plaintiff brings this claim individually and on behalf of the members of the Class. Plaintiff asserts state law warranty claims arising under the laws of the State of California.

116. In addition, Defendant's Products are consumer products as defined in 15 U.S.C. § 2301(1).

117. Plaintiff and the other Class members are consumers as defined in 15 U.S.C. § 2301(3).

118. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

119. In connection with the sale of the Products, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Products possessed certain attributes and qualities, as described herein, when in fact, these Products did not possess said attributes, benefits, and qualities.

120. By breaching the express written warranties as described herein, Defendant violated the statutory rights of Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq., thereby damaging Plaintiff and other Class members.

121. Plaintiff notified the Defendant in writing of their claims and that the Plaintiff is acting on behalf of the Classes. *See* Ex. 3.

PRAYER FOR RELIEF

122. Wherefore, Plaintiff, on behalf of himself, all others similarly situated and the general public, pray for judgment against the Defendant as to each and every cause of action, including:

- A. An order declaring this action to be a proper Class Action and requiring Defendant to bear the costs of Class notice;

- 1 B. An order awarding declaratory and injunctive relief as permitted
2 by law or equity, including enjoining Defendant from continuing
3 the unlawful practices as set forth herein;
- 4 C. An order awarding restitution and disgorgement of Defendant's
5 revenues from the Products to Plaintiff and the proposed Class
6 members, under the UCL and FAL;
- 7 D. An order awarding damages under Plaintiff and the Class'
8 Warranty claims for relief;
- 9 E. An order compelling Defendant to engage in a corrective
10 advertising campaign to inform the public concerning the true
11 nature of their Products;
- 12 F. An order awarding attorneys' fees and costs to Plaintiff and the
13 Class;
- 14 G. An order providing for all other such equitable relief as may be
15 just and proper.

16 **JURY DEMAND**

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

18
19 Dated: May 18, 2016

/s/ Ronald A. Marron

By: Ronald A. Marron

LAW OFFICES OF RONALD A.

MARRON, APLC

RONALD A. MARRON

SKYE RESENDES

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

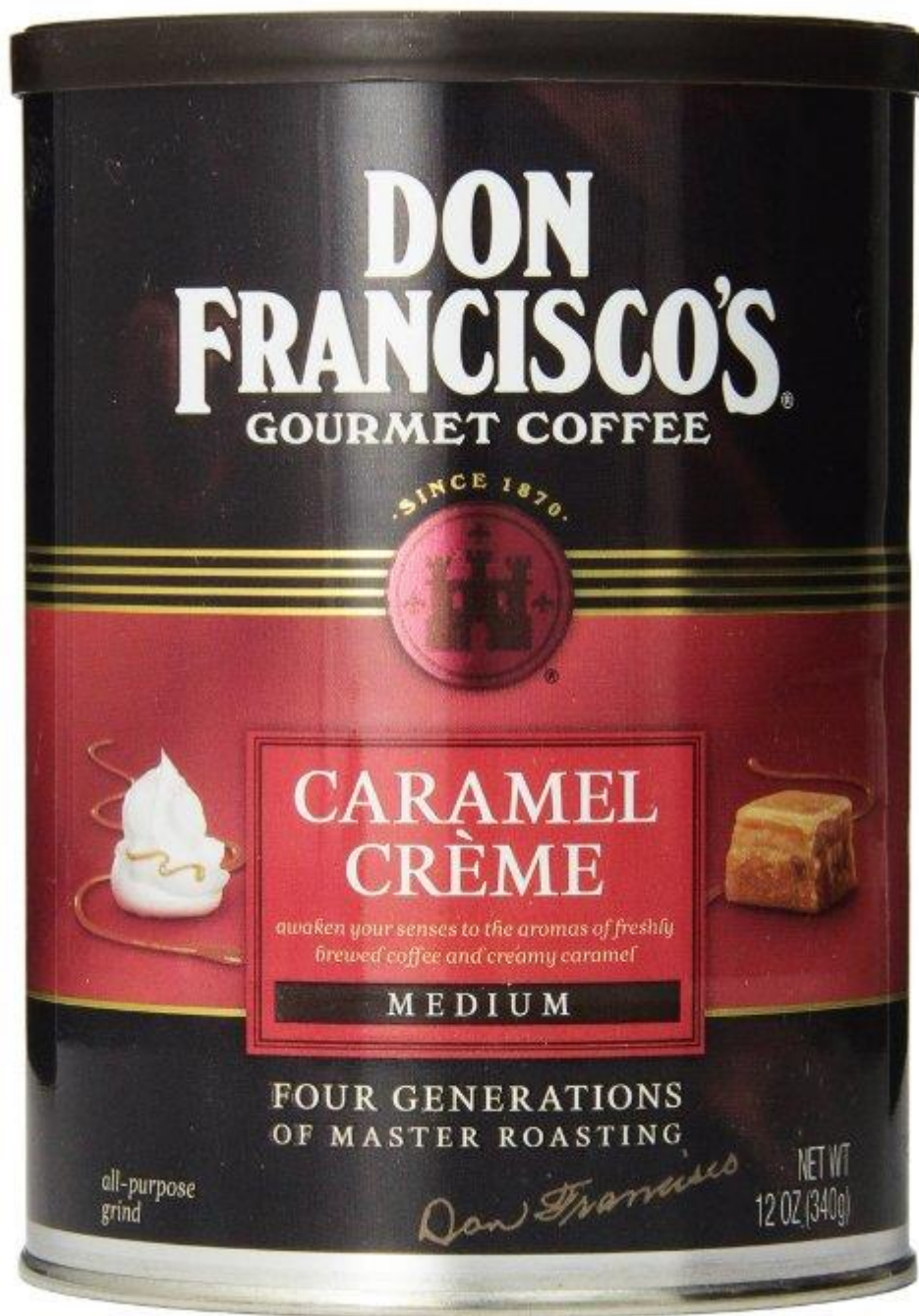
Facsimile: (619) 564-6665

1 **LAW OFFICE OF DAVID ELLIOT**
2 DAVID ELLIOT (SBN 270381)
3 *elliott.david@hotmail.com*
4 2028 3rd Avenue
5 San Diego, CA 92101
6 Telephone: (858) 228-7997

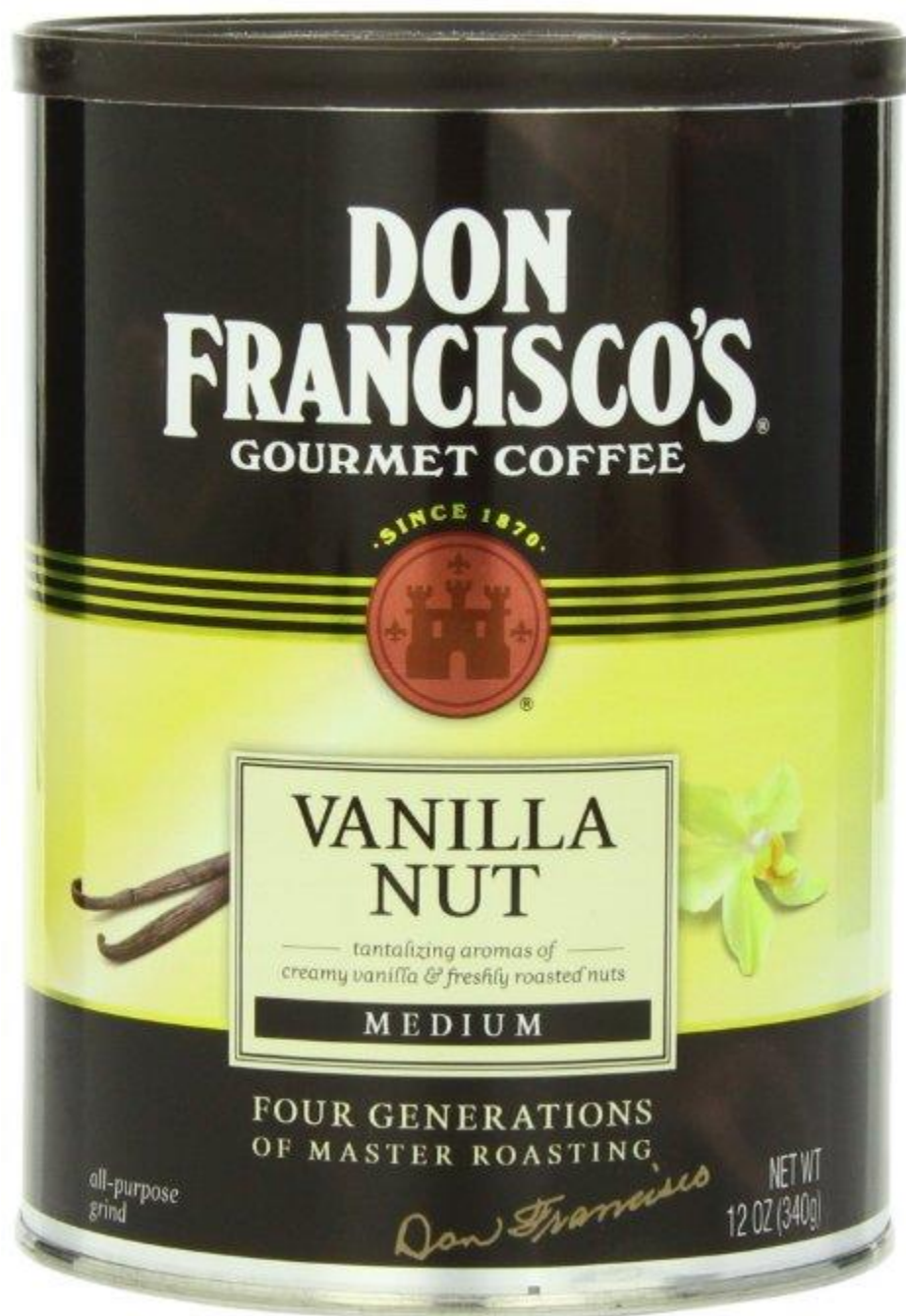
7 *Attorneys for Plaintiff and the Proposed*
8 *Class*
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EXHIBIT 1









"Each coffee-growing country offers many grades of coffee, some excellent and some not. But a country's reputation is always built on its very best grade. Many brands mix poor-quality coffee beans with good ones to keep costs down. That's why a coffee lover can be so pleased with one cup, and so disappointed with another.

We never mix the quality of coffee. We choose the very highest grade of beans from the best coffee-growing countries, and we keep them pure. Then we roast them in a way that brings out their unique flavor, just the way my family has for over 135 years.

So if you want coffee that's built the reputation, it's inside. We hope each country's best will give you the pleasure only a great cup of coffee can."



Don Francisco

SUSTAINABILITY

DON FRANCISCO TAUGHT US TO RESPECT AND HONOR THE LAND AND ITS PEOPLE. THAT PRINCIPLE IS IN EVERY ASPECT OF OUR BUSINESS TODAY. WE ARE COMMITTED TO IMPROVING THE WAY OUR COFFEE-GROWING PARTNERS CARE FOR THEIR LAND, AND TO ENRICHING THEIR COMMUNITIES THROUGH EDUCATION AND HEALTHCARE PROGRAMS.

LIVELY FLAVORS

DON FRANCISCO'S HAS DISCOVERED A WAY TO BALANCE THE TASTE OF FRESHLY-ROASTED COFFEE WITH THE BOUQUET OF LIVELY FLAVORINGS. YOU'LL DISCOVER THAT THE APPETIZING AROMAS OF ROASTED NUTS, ZESTY CINNAMON, BUTTERSCOTCH, OR CREAMY VANILLA WILL BRING YOUR COFFEE EXPERIENCE TO NEW HEIGHTS OF SATISFACTION.

100% ARABICA

OF THE TWO MAIN VARIETIES OF COFFEE, ARABICA BEANS BREW A MORE AROMATIC AND FLAVORFUL BEVERAGE. THE GREAT COFFEES OF THE WORLD, SUCH AS COLOMBIAN AND KONA, ARE ARABICAS. THESE MORE-FLAVORFUL BEANS APPEAR IN STORES AS WHOLE BEAN, AND IN HIGH-QUALITY GROUND COFFEES.



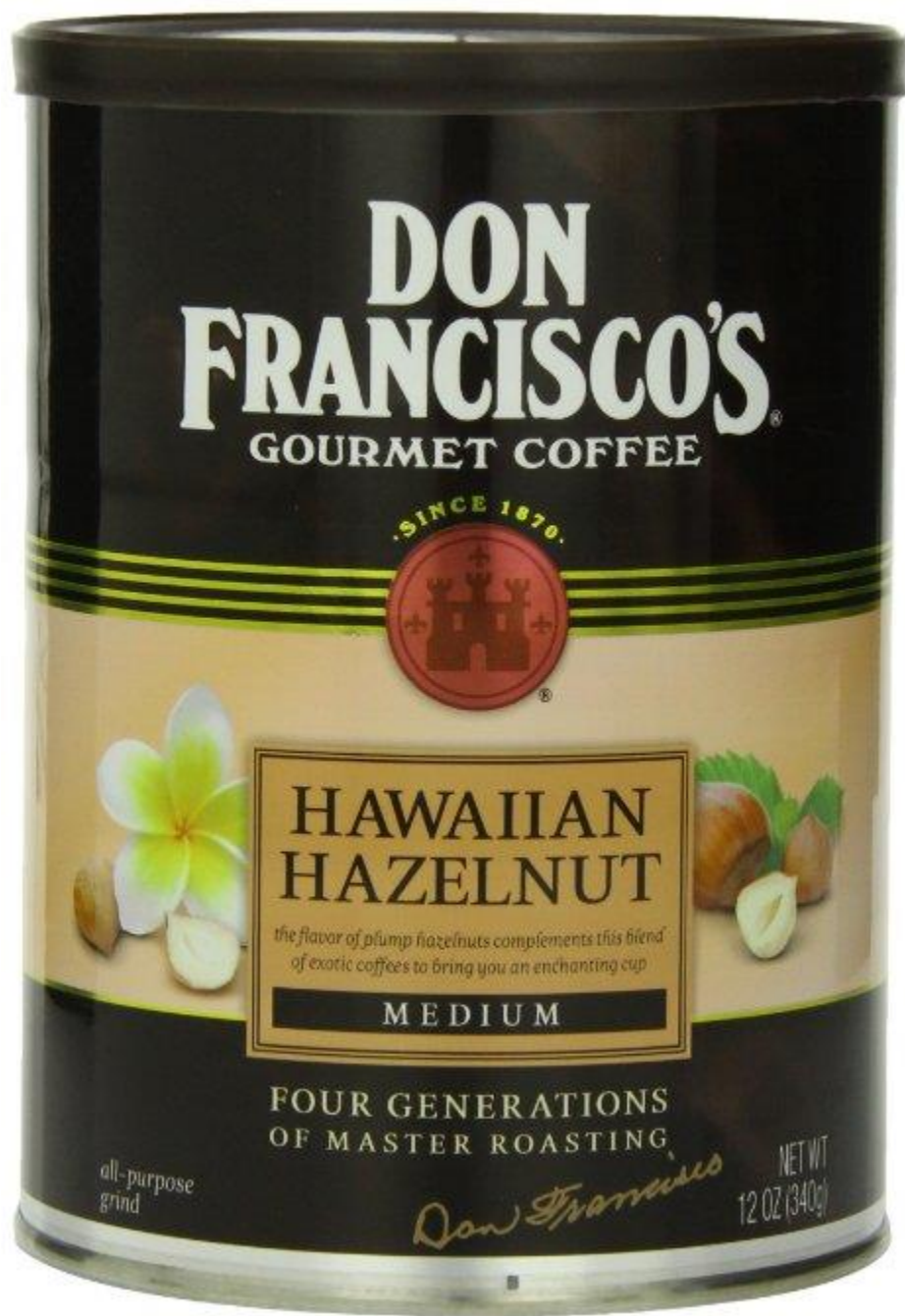


EXHIBIT 2



[My Account](#) | [View Cart](#)

- [Origin](#)
- [Blends](#)
- [Flavored](#)
- [Organic](#)
- [Gifts and Samplers](#)
- [Accessories](#)
- [Single Serve](#)
- [Our Story](#)
- [Contact](#)

Cinnamon Hazelnut

D ALSO AVAILABLE IN DECAF

- Caramel Spiced Rum
- Frosted Oatmeal Cookie
- L'Orange
- Butterscotch
- Caramel Cream
- Chocolate
- Chocolate Raspberry
- Cinnamon Hazelnut
- Coconut Cream
- Cookies & Cream
- Crème D'Irlande
- French Caramel
- French Vanilla
- Hawaiian Hazelnut
- Hazelnut Cream
- Macadamia Nut
- Nutty Doodle
- Vanilla Nut
- Vienna Cinnamon



Cinnamon Hazelnut 12 oz. can


Buy 6 or more and save 10%
Like a spicy dessert. The fragrance of cinnamon lends zest to the nuttiness of hazelnut.

(click for a larger image)

ITEM #	DESCRIPTION	PRICE	QTY
CIN12	Cinnamon Hazelnut 12 oz. can	This product is only available ground.	+ -
CIH5	Cinnamon Hazelnut 5 lbs.	This product is only available whole bean.	+ -

DECAFFEINATED			
DCIH5	Decaf Cinnamon Hazelnut 5 lbs.	This product is only available whole bean.	+ -

REVIEWS [Review this coffee](#)

Product Rating:  **Date Posted:** 2011-05-04 11:45:54
satisfied customer
Posted By: Pam
Location: Georgetown, IN United States
Comments:
This is the best coffee that I have ever had. I don't usually like flavored coffee but my husband wanted to try it and I was really surprised. We have used the whole bag!!!

Product Rating:  **Date Posted:** 2011-09-14 22:56:33
Cinnamon Hazelnut
Posted By: maureen smith
Location: Colton, CA United States
Comments:
I use to buy it at Stater Bros. I can't find it anywhere anymore.

Product Rating:  **Date Posted:** 2012-02-25 21:22:18
I love coffee
Posted By: Lynn Sylvester
Location: Opelika, AL United States
Comments:
Cinnamon Hazelnut is the best!!

Product Rating:  **Date Posted:** 2012-06-17 14:44:30
HAZELNUT COFFEE
Posted By: SUZANNE SERRA
Location: KEARNY, NJ United States
Comments:
THIS IS THE BEST COFFEE I HAVE EVER EXPERIENCED

Product Rating:  Date Posted: 2012-10-02 14:58:14

Great Tasting Flavored Coffee

Posted By: Dan McGinn
Location: Raleigh, NC United States

Comments:
This is my family's favorite coffee. The Cinnamon Hazelnut blend has a great smooth, crisp taste with a fantastic aroma. No need for a flavored creamer. It's the coffee we try to save for guests but find we can't help ourselves. I only wish Dan Francisco would make K-Cups of its great coffee. Thanks!

Product Rating:  Date Posted: 2013-08-14 22:55:04

FAVORITE

Posted By: Brittany
Location: mesa, AZ United States

Comments:
BEST coffee I have ever had!!! I do not start my day without it!

Product Rating:  Date Posted: 2014-01-08 21:06:52

The best!

Posted By: Joe Martinez
Location: Tallahassee, FL United States


Comments:
Bought a can at my local Publix and absolutely loved it. When I ran out I went back for more only to find the Cinnamon Hazelnut is no longer stocked. Couldn't find it at Walmart either.

Product Rating:  Date Posted: 2014-02-01 15:04:00

My FAVORITE Coffee!!

Posted By: Marianne Branch
Location: Owasso, OK United States


Comments:
I love this coffee!!! Can't buy it here in Oklahoma so I have family members in California sending it to me. Glad I found the website. I will be ordering from now on!

Product Rating:  Date Posted: 2015-04-01 14:01:38

Cinnamon Hazelnut Fan

Posted By: Debra
Location: Houston, TX United States

Comments:
Best coffee ever!! My Randalls store used to sell it but no more!! They only have plain hazelnut. Where can I get more cinnamon hazelnut??

Product Rating:  Date Posted: 2015-11-05 11:32:30

Our favorite

Posted By: Emily
Location: Lake Balboa, CA United States

Comments:
This is our favorite coffee. I only wish they would make this one in the K Cups. It would be even better then!!

ROASTING CHART



MEDIUM - Medium Roast is the lightest of our offerings, and is roasted to allow the coffee's spicy flavors and aromas to fully develop.



MEDIUM BOLD - Our Medium Bold Roast coffee is roasted to give the coffee a sweet, smoky taste.



BOLD - Bold Roast is our darkest coffee, and is roasted to let the coffee's natural sugars to caramelize to deliver smoky, caramely, dark chocolaty flavors.

EXHIBIT 3

LAW OFFICES OF

RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

April 27, 2016

Via: Certified Mail, (receipt acknowledgment with signature requested)

F. Gaviña & Sons, Inc.
2700 Fruitland Ave.
Vernon, CA 90058

***RE: NOTICE OF Breach of Warranties, Violations of Consumer Protection Laws,
and Duty to Preserve Evidence***

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (“MMWA”), notifying **F. Gaviña & Sons, Inc.** (“YOU” and “YOUR”) of violations of the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*, “CLRA”) and similar state consumer protection laws in other states, plus the Magnuson-Moss Warranty Act (“MMWA”), and of our demand that YOU remedy such violations within thirty (30) days of your receipt of this letter.

This firm represents Mr. Taylor Ely. Mr. Ely purchased YOUR Don Francisco Cinammon Hazelnut and Don Francisco Vanilla Nut brands of flavored ground coffee multiple times over the past 4 years. Mr. Ely purchased the Products for personal and family use, primarily at a Big Johns Market in Healdsburg, California.

These Products’ front labels describe the Products’ characterizing flavors, in the above cases for example, as “Vanilla,” “Vanilla Nut,” “Cinammon,” and “Hazelnut” as if these were entirely naturally-flavored coffees. YOU also market other flavors of Don Francisco ground coffees (such as Hawaiian Hazelnut, French Caramel, Hazelnut Cream, Macadamia Nut, Vienna Cinnamon, Chocolate, Chocolate Raspberry, L’Orange, Butterscotch, Coconut ream, and Caramel Cream) in a similar manner, through the use of partial or fully artificially flavored food additives, the artificial nature of which is not fully and adequately disclosed on the front of the packaging (the “Products”).

The Products, however, are not exclusively naturally-flavored as suggested by the Products' labels. Each Product's ingredient list discloses that it is instead flavored with compounds identified as "artificial flavor." These Products in fact owe their characterizing flavors to Defendant's use of artificial flavors, and the Products' front labels and principal display panels fail to accurately or lawfully disclose this critical fact to consumers. The Products are therefore deceptively advertised, labeled, and marketed.

Mr. Ely purchased the Products in reliance on that deceptive advertising and labeling. Mr. Ely was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising. A reasonable consumer would rely on the deceptive claims made in YOUR advertisements and packaging and through the exercise of reasonable diligence would not have discovered the violations alleged herein.

YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation that the Products are entirely naturally-flavored when in fact they are not. This letter therefore serves to notify you that the Product's packaging claims created express and implied warranties under the Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* and state law, which the Products breached. Those warranties formed part of the benefit of the bargain and when the Product was not as warranted by YOU, Mr. Ely and all others similarly situated suffered economic loss.

YOU have further failed to honor your consumer protection obligations under state law. The federal Food, Drug and Cosmetic Act ("FDCA"), which is adopted in all relevant parts by the State of California, prohibits the marketing and sale of the Products without full and adequate front-of-pack disclosure that the characterizing flavor(s) are derived, in whole or part, from artificial flavor(s). *See* 21 C.F.R. §§ 101.22(c), (i); Cal. Health & Safety Code §§ 110085, 110100, 110290, 110295, 110660, *et seq.*

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR Products. YOUR material misrepresentations are deceiving customers into purchasing YOUR Products, at a higher cost, under the representation that the Products bear the ingredients depicted through words and pictures on the front of the Products' coffee packaging. But, YOU are able to flavor coffee of a lesser quality, with artificial ingredients that are cheaper to source, thus depriving Mr. Ely and substantially similar consumers of the benefit of the bargain and the complete truth as required under the consumer fraud laws of this state and other states in the United States.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Mr. Ely, all other similarly-situated U.S. residents and the general public:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Under state consumer protection laws that do not require advance notice of intent to sue, you may already be liable for any or all of these remedies. In addition, California Civil Code Section 1780 (b) provides in part that: “Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars** (\$5,000)... [emphasis added]”.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass’n Int’l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

Additionally, I remind YOU of YOUR legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

I look forward to YOUR response and to being informed that YOU have initiated corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Mr. Taylor Ely, all others similarly situated,
and the general public

7015 1730 0001 6926 4680

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ _____	Postmark Here <i>sent 4/27/16</i>
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ _____	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Total Postage and Fees \$ _____	
Sent to <i>F. Garin : sons</i>	
Street and Apt. No., or PO Box No. _____	
City, State, ZIP+4® _____	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

F. Gaviña & Sons, Inc.
2700 Fruitland Ave.
Vernon, CA 90058



9590 9402 1650 6053 0359 56

2. Article Number (Transfer from service label)

7015 1730 0001 6926 4680

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

L. M. Vega

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Ignacio Vega

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Return Receipt for Merchandise

☐ Signature Confirmation™

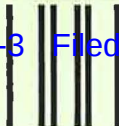
☐ Signature Confirmation Restricted Delivery

1a1

1a1 Restricted Delivery

0)

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 1650 6053 0359 56

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •

Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103

Gravina



JS 44 (Rev. 12/12) cand rev (1/15/13)

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

Taylor Ely

DEFENDANTS

F. Gavina & Sons, Inc.

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

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

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

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

Ronald A. Marron

Law Offices of Ronald A. Marron

651 Arroyo Drive, San Diego, CA 92103 (619) 696-9006

Attorneys (If Known)

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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" 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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Civil Code Sections 1750, Cal. Bus. & Prof. Code Sections 17200, 17500

Brief description of cause:

Violation of California Consumers Legal Remedies Act, Unfair Competition Law, False Advertising

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,000.01

CHECK YES only if demanded in complaint:

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

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/18/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Ronald A. Marron

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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