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12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 SANDRA BROWN, on behalf of  
15 herself, all others similarly situated,  
16 and the general public,

17 Plaintiff,

18 v.

19 STARBUCKS CORPORATION, a  
20 Washington Corporation,

21 Defendant.

Case No: 18-cv-2286-JM(WVG)

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 Sandra Brown (“Plaintiff”), on behalf of herself and all others similarly situated, by  
2 and through her undersigned counsel, hereby brings this action against The Starbucks  
3 Corporation (“Starbucks” or “Defendant”), alleging that certain products manufactured,  
4 packaged, labeled, advertised, distributed and sold by Defendant are deceptively and  
5 unlawfully advertised in California and the United States and otherwise violate California  
6 and federal law, and upon information and belief and investigation of counsel alleges as  
7 follows:

8 **I. JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction over this action under the Class Action  
10 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Defendant is a citizen of a state  
11 different from that of the Plaintiff, the putative class size is greater than 100 persons, and  
12 the amount in controversy in the aggregate for the putative Class exceeds the sum or value  
13 of \$5 million exclusive of interest and costs.

14 2. The Court has jurisdiction over the state law claims because they form part  
15 of the same case or controversy under Article III of the United States Constitution.

16 3. This Court has both general and specific personal jurisdiction over the  
17 Defendant.

18 4. The Court has personal jurisdiction over Defendant because Defendant’s  
19 Product is advertised, marketed, distributed and sold through the State of California;  
20 Defendant engaged in the wrongdoing alleged in this Complaint throughout the United  
21 States, including in the State of California; Defendant is authorized to do business in the  
22 State of California and engages in substantial activity with the State of California;  
23 Defendant has hundreds of stores throughout the United States, including in the State of  
24 California; and Defendant has sufficient minimum contacts with the State of California,  
25 rendering the exercise of jurisdiction by the Court permissible under traditional notions of  
26 fair play and substantial justice.

27 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a  
28 substantial part of the events or omissions giving rise to the claims occurred within this  
judicial district, Defendant has marketed and sold the Product at issue in this judicial

1 district, and it conducts business within this judicial district. Plaintiff also purchased the  
2 Product within this District.

3 **II. NATURE OF THE ACTION**

4 6. This is a consumer class action for violations of express and implied  
5 warranties, negligent and intentional misrepresentations, fraudulent omissions, and  
6 consumer protection laws, with a California class for violations of California consumer  
7 protection laws.

8 7. Defendant manufactures, packages, distributes, advertises, markets, and sells  
9 a house-brand product identified as “Starbucks Sour Gummies” (the “Product”).

10 8. Under the Code of Federal Regulations, any Product containing artificial  
11 flavors which simulate, resemble, or reinforce the characterizing flavors must  
12 “conspicuously” disclose that fact on the “principal display panel or panels of the label.”  
13 *See* 21 C.F.R. 101.22(i)(2); 21 C.F.R. 101.22(i)(3).

14 9. The Product’s front label identifies the Product as “Apple, watermelon,  
15 tangerine and lemon-flavored candies.”

16 10. Under the Code of Federal Regulations, “If the label, labeling, or advertising  
17 of a food makes any direct or indirect representations with respect to the primary  
18 recognizable flavor(s), by word, vignette, e.g., depiction of a fruit, or other means, or if for  
19 any other reason the manufacturer or distributor of a food wishes to designate the type of  
20 flavor in the food other than through the statement of ingredients, such flavor shall be  
21 considered the characterizing flavor.” *See* 21 C.F.R. 101.22(i).

22 11. Under the Code of Federal Regulations, apple, watermelon, tangerine and  
23 lemon are considered the “characterizing” flavors of the Product. *See* 21 C.F.R. 101.22(i).

24 12. The Product contains the artificial flavor fumaric acid, which simulates and  
25 reinforces the characterizing flavors of the Product.

26 13. But, the Product label fails to provide an “artificially flavored” disclosure on  
27 the “principal display panel or panels of the label” as required by California and federal  
28 law. *See* 21 C.F.R. 101.22(i)(2); 21 C.F.R. 101.22(i)(3); Cal. Health & Saf. Code § 109875,

1 *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.<sup>1</sup>

2 14. The Product is therefore falsely advertised throughout the United States and  
3 in California, and otherwise violates consumer protection laws.

4 15. Defendant intentionally omitted the legally-required “artificially flavored”  
5 disclosure from consumers because consumers prefer naturally-flavored food products  
6 over products with artificial flavors, and will pay more for natural products,

7 16. Defendant’s packaging, labeling, and advertising scheme is intended to  
8 conceal from consumers the fact that the Product contains artificial flavoring.

9 17. Plaintiff, who was deceived by Defendant’s unlawful conduct and purchased  
10 the Product multiple times in California during the proposed Class Period, brings this  
11 action, on her own behalf and on behalf of California and nationwide consumers similarly  
12 situated, to remedy Defendant’s unlawful acts.

13 18. On behalf of the Class as defined herein, Plaintiff seeks an order compelling  
14 Defendant to, *inter alia*: (1) cease packaging, distributing, advertising and selling the  
15 Product in violation of California law; (2) re-label or recall all existing deceptively  
16 packaged Products; (3) conduct a corrective advertising campaign to fully inform  
17 California and nationwide consumers; (4) award Plaintiff and other Class-members  
18 restitution, actual damages, and punitive damages; and (5) pay all costs of suit, expenses,  
19 and attorney fees.

### 20 **III. PARTIES**

21 19. Defendant the Starbucks Corporation (“Starbucks” or “Defendant”)  
22 manufactures, packages, labels, advertises, markets, distributes, and sells the Product in  
23 California and throughout the United States.

24 20. Starbucks is a Washington corporation with its headquarters and principal

25 <sup>1</sup> California’s Sherman Food, Drug, and Cosmetic Act, Cal. Health & Saf. Code § 109875,  
26 *et seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food  
27 Drug and Cosmetic Act. An act or omission that would violate FDCA regulations  
28 necessarily therefore violates California’s Sherman Law. *Id.* at § 110100. Regulatory  
citations in the text are to California’s Sherman Law and reference the corresponding  
federal regulation for convenience.

1 place of business located at 2401 Utah Avenue S., Suite 800, Seattle, Washington.  
2 Starbucks is registered with the California Secretary of State under entity number  
3 C1672418.

4 21. Plaintiff Sandra Brown (“Plaintiff”) is a resident and citizen of Santee,  
5 California who purchased the Product multiple times during the Class Period in 2017 in  
6 California for personal and household consumption.

7 **IV. FACTUAL ALLEGATIONS**

8 **A. Defendant Unlawfully Omits That The Product Contains Artificial Flavoring**

9 22. The Product is a Starbucks private-label sour gummy candy assortment.

10 23. The Product’s front-of-package label claims that the package contains Apple,  
11 Watermelon, Tangerine, and Lemon-flavored sour candies.

12 24. The label does not disclose that the Product contains an artificial flavor.

13 25. Food products made exclusively with natural ingredients command a price  
14 premium compared to similar products that contain synthetic ingredients such as artificial  
15 flavors.

16 26. California consumers, like American consumers nationwide, seek out natural  
17 food products and are willing to pay significantly more for such products when compared  
18 to food products with artificial ingredients.<sup>2</sup>

19 27. In response to consumer feedback regarding the willingness to pay  
20 significantly more for natural food products, Starbucks maintains a health and wellness  
21 campaign stating that Starbucks listens to its customers and continues to evolve its health  
22 and wellness options influenced by customer feedback.<sup>3</sup>

23 28. Starbucks’ Director of Retail Brand Partnerships, Deb Hannah stated that “We  
24

25 <sup>2</sup> “*Consumers Want Healthy Foods - And Will Pay More For Them*”; Forbes Magazine,  
26 February 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; (last visited March 22,  
27 2018).

28 <sup>3</sup> <https://news.starbucks.com/news/customers-influence-health-and-wellness-options-at-starbucks>; (last visited Apr. 10, 2018).

1 know customers are snacking on the go and looking for snacks that are healthier.”<sup>4</sup>

2 29. In conformity with its health and wellness campaign, Starbucks markets its  
3 snack food options to those seeking healthier options. For example, as part of its expanded  
4 snack options, Starbucks offers “packaged snacks” as “a great opportunity to expand our  
5 offerings to those with specific dietary needs, like gluten-free and vegan.”<sup>5</sup>

6 30. To appeal to consumers who seek out natural food products and are willing to  
7 pay more for them, Defendant omits the legally-required “artificially flavored” disclosure  
8 from the Product.

9 31. Figure 1 below is a true and accurate representation of Starbucks’ Sour  
10 Gummies Product front-label.

11 Figure 1: Starbucks Sour Gummies Front Label



24 32. Figure 2 below is a true and accurate representation of Starbucks’ Sour  
25 Gummies Product rear-label.  
26

27 \_\_\_\_\_  
28 <sup>4</sup> See id.

<sup>5</sup> See id.

1 Figure 2: Starbucks Sour Gummies Rear-Label



11

12 33. On the Product’s front label, Defendant advertises four fruit flavors – apple, watermelon, tangerine, and lemon – in addition to the generic “sour” flavor.

13

14 34. On the Product’s rear label, Defendant provides an ingredient list which identifies “fumaric acid.”

15

16 35. The fumaric acid that Defendant uses in the Product is a synthetic petrochemical added to the Product to create the overall “sour” flavor and to simulate and reinforce the Product’s four characterizing fruit flavors.

17

18 36. Defendant fails to properly disclose this artificial flavor on the Product’s “principle display panel” or “panels of the label, violating federal and California law in multiple ways. *See* 21 C.F.R. § 101.22(i); Cal. Health & Saf. Code § 109875, *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.

19

20

21

22 37. Because the Product contains an artificial flavoring ingredient that simulates and reinforces the Product’s characterizing flavors, the front label of the Product is required by law to prominently disclose the use of artificial flavoring. Cal. Health & Saf. Code § 109875, *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.

23

24

25

26 38. Omitting this disclosure from the Product’s front label conceals this fact from consumers, who are not required to scrutinize the rear-label for information that federal and state regulations require be displayed prominently on the front. Cal. Health & Saf.

27

28



1 Code § 109875, *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.

2 39. The industrial fumaric acid chemical ingredient that Defendant uses is  
3 artificially-synthesized. It is derived from petrochemicals – not from natural sources – and  
4 is therefore an artificial flavor under federal and California law.

5 40. The fumaric acid is not naturally-occurring but is in fact manufactured in  
6 petrochemical plants from benzene or butane—components of gasoline and lighter fluid,  
7 respectively—through a series of chemical reactions, some of which involve highly toxic  
8 chemical precursors and byproducts.

9 41. The fumaric acid ingredient is synthesized from petrochemical feedstocks,  
10 through an intermediate chemical transformation to maleic anhydride.

11 42. Maleic anhydride, also called 2,5-Furandione, is a common chemical  
12 precursor used in the industrial manufacture of various other chemicals and intermediaries,  
13 including fumaric acid. It is also commonly used as a feedstock in other chemical  
14 manufacturing processes to make paints, polymeric plastic resins, industrial coatings,  
15 pesticides, and agricultural chemicals.<sup>6</sup>

16 43. Starbucks uses synthetic fumaric acid in its Product to simulate, resemble, or  
17 reinforce the four characterizing fruit flavors and the generic “sour” flavor in the Product.

18 44. Because the Product contains artificial flavoring, California law requires the  
19 Product to display both front- and back-label disclosures to inform consumers that the  
20 Product is artificially flavored.

21 45. The Product has neither of the required disclosures.

22 46. California law, incorporating U.S. Food, Drug, and Cosmetic Act regulations  
23 by reference, further requires that a food’s label accurately describe the nature of the food  
24 product and its characterizing flavors. 21 C.F.R. § 102.5(a).

25 47. Any recognizable primary flavor identified directly or indirectly on the front  
26 label of a food Product, whether by word, vignette, depiction of a fruit, or other means, is  
27 referred to as a “characterizing flavor.”

28 <sup>6</sup> Maleic anhydride, CAS No. 108-31-6; <https://www.epa.gov/sites/production/files/2016-09/documents/maleic-anhydride.pdf>; last visited Oct. 2, 2018.

1 48. Any flavor components identified on the Product’s front label, either in text  
2 or in recognizable pictures, are considered primary recognizable flavors and are therefore  
3 characterizing flavors for each Product.

4 49. For Defendant’s “Starbucks Sour Gummies” product, the “Sour” flavor and  
5 the four specifically-identified fruits are all considered characterizing flavors.

6 50. If any characterizing flavor is not created exclusively by the named flavor  
7 ingredient, the product’s front label must state that the product’s flavor was simulated or  
8 reinforced with either or both natural or artificial flavorings. If any artificial flavor is  
9 present which “simulates, resembles or reinforces” the characterizing flavor, the label must  
10 prominently inform consumers that the product is “Artificially Flavored.”<sup>7</sup>

11 51. Further, a food product’s label also must include a statement of the “presence  
12 or absence of any characterizing ingredient(s) or component(s) . . . when the presence or  
13 absence of such ingredient(s) or component(s) in the food has a material bearing on price  
14 or consumer acceptance . . . and consumers may otherwise be misled about the presence  
15 or absence of the ingredient(s) or component(s) in the food.”<sup>8</sup>

16 52. Such statement must be in boldface print on the front display panel and of  
17 sufficient size for an average consumer to notice. *Id.*

18 53. In addition, a food product that does not contain any of the natural fruit  
19 comprising the advertised fruit flavors must disclose on the front label that the product is  
20 “artificially flavored.”

21 54. The synthetic fumaric acid in the Product simulates, resembles, and reinforces  
22 the characterizing “Sour” flavor and all the named characterizing fruit flavors.

23 55. The Product violates both state and federal food labeling laws.

24 56. Under California statutory labeling requirements, Defendant was required to  
25 place prominently on the Product’s front and back labels a notice sufficient to allow  
26 California consumers to understand that the Product contained artificial flavorings.

27 57. Defendant failed to do so, deceiving consumers and violating California law.

28 <sup>7</sup> California’s Sherman Law, incorporating 21 C.F.R. § 101.22(i) (3), (4).

<sup>8</sup> California’s Sherman Law, incorporating 21 C.F.R. § 102.5(c).

1 58. Plaintiff and the Class were unaware that the Product contained artificial  
2 flavoring when they purchased them.

3 59. When purchasing the Product, Plaintiff and the Class were seeking a product  
4 of particular qualities, one that was consistent with the Product's front-of-package labeling  
5 and which did not contain artificial flavoring.

6 60. Plaintiff is not alone in these purchasing preferences. As reported in Forbes  
7 Magazine, eighty-eight percent (88%) of consumers polled recently indicated they would  
8 pay more for foods perceived as natural or healthy. "All demographics [of consumers]—  
9 from Generation Z to Baby Boomers—say they would pay more" for such Product,  
10 specifically including foods with no artificial flavors.<sup>9</sup> Forty-one percent (41%) of  
11 consumers rated the absence of artificial flavors in food Product as "Very Important," and  
12 eighty percent (80%) of North American consumers are willing to pay a premium for foods  
13 with no artificial ingredients.<sup>10</sup>

14 61. John Compton, a Fortune 50 food and beverage industry CEO, spoke to  
15 investors at the Morgan Stanley Consumer & Retail Conference, stating, "We have talked  
16 extensively to consumers about this idea, and they come back and tell us the number one  
17 motivation for purchase is products that claim to be all natural."

18 62. Defendant's independent health and wellness campaign identifies these  
19 consumer preferences. Starbucks' Director of Retail Brand Partnerships, Deb Hannah  
20 stated "We know customers are snacking on the go and looking for snacks that are  
21 healthier."<sup>11</sup>

22 63. After running a health and wellness campaign, Starbucks would have

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23 <sup>9</sup> *Consumers Want Healthy Foods--And Will Pay More For Them*, FORBES MAGAZINE (Feb.  
24 15, 2015), <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; last visited Mar. 9, 2018.

25 <sup>10</sup> The Nielsen Company, Global Health and Wellness Survey, *We Are What We Eat: Healthy Eating Trends Around the World*, (Jan. 2015); <https://www.nielsen.com/content/dam/niensenglobal/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>; (last visited Mar. 9, 2018)

26 <sup>11</sup> <https://stories.starbucks.com/stories/2016/customers-influence-health-and-wellness-options-at-starbucks/>

1 consumers believe that its products are healthier than others.

2 64. Defendant labels and advertises its Product to reflect these consumer  
3 preferences — not by making the Product only with natural ingredients, but instead by  
4 omitting the legally-required disclosure informing consumers that the Product contains  
5 artificial flavors.

6 65. Consumers did not know the Product contained artificial flavoring ingredients  
7 due to Defendant’s omission of the legally-required disclosure, coupled with consumers’  
8 belief that Defendant’s products are healthier than others.

9 66. The Product’s label deceived consumers into paying a price premium for an  
10 artificially-flavored product. That product was worth less than the product promised by the  
11 label, which did not disclose the use of artificial flavoring.

12 67. California’s Health & Safety Code states that “Any food is misbranded if it  
13 bears or contains any artificial flavoring, artificial coloring, or chemical preservative,  
14 unless its labeling states that fact.” Cal. Health & Saf. Code § 110740.

15 68. California law therefore required Defendant to include on the Product’s label  
16 a notice alerting California consumers that the Product is artificially flavored.

17 69. Defendant failed to do so.

18 70. Because the Product violated California law, it was misbranded and illegal to  
19 advertise, transport, distribute, or to sell in California. Cal. Health & Saf. Code § 110740;  
20 § 110760; § 110765.

21 71. Plaintiff and the Class lost money as a result of Defendant’s conduct because  
22 they paid a price premium for a product that was artificially flavored when they sought to  
23 purchase one that was not.

24 **B. Defendant’s Competitors Label Their Products Lawfully.**

25 72. Starbucks not only omits this material fact from consumers, but also gains an  
26 unfair commercial advantage in the marketplace by failing to label the Product in  
27 accordance with federal and California law.

28 73. Manufacturers of competing sour and fruit candy products label their products  
lawfully.

1 74. Competing manufacturers correctly label their artificially-flavored fruit  
2 candies as “Artificially Flavored.”

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

6 76. Defendant, however, omits the legally-required disclosure regarding its use of  
7 artificial flavoring, thereby deceiving consumers, illegally cutting costs and increasing  
8 profits, competing unfairly and unlawfully in the marketplace, and hurting consumers and  
9 competitors as a result.

10 77. Defendant’s conduct injures competing manufacturers that do not engage in  
11 the same illegal behavior. These manufacturers compete for market share and limited shelf  
12 space, as well as for consumers’ buying preferences and dollars. Defendant’s competitors  
13 do so lawfully. Defendant does not.

14 C. Plaintiff’s and Class Purchases of the Product

15 78. Plaintiff purchased the Product in California during the Class Period as  
16 defined herein.

17 79. Plaintiff purchased Starbucks Sour Gummies several times in 2017. Plaintiff’s  
18 most recent purchase was in December 2017 at Starbucks located on 9868 Mission Gorge  
19 Road B., Santee, CA 92071.

20 80. The Products were purchased at the marked retail prices, typically \$1.75 each.

21 81. Plaintiff first discovered Defendant’s unlawful acts described herein in  
22 September 2018, when she learned the Product’s characterizing flavors were deceptively  
23 created or reinforced using artificial flavoring even though Defendant failed to disclose  
24 that fact on the Product’s label.

25 82. Plaintiff was deceived by and relied upon the Product’s deceptive labeling,  
26 and specifically the omission of the fact that this Product contained artificial flavoring.  
27 Plaintiff purchased this Products believing it did not contain artificial flavors, based on the  
28 Product’s deceptive labeling and failure to disclose that it was artificially flavored.

83. Neither Plaintiff nor any of the Class members, as reasonable consumers, are

1 required to subject consumer food products to laboratory analysis, to scrutinize the back  
2 label to discover that a product's front label is deceptive, or to search the label for  
3 information that federal and state regulations require be displayed prominently on the front.

4 84. Defendant, but not Plaintiff or the Class, knew that this labeling was in  
5 violation of state and federal law.

6 85. Because Plaintiff reasonably assumed the Product to be free of artificial  
7 flavoring, based on the Product label's omission of that fact, when it was not, she did not  
8 receive the benefit of her purchases.

9 86. Plaintiff would not have purchased the Product in the absence of Defendant's  
10 misrepresentations and omissions. Had Defendant not violated California or federal law,  
11 Plaintiff would not have been injured.

12 87. The Product was worth less than what Plaintiff paid for it and Class members  
13 would not have paid as much as they have for the Product absent Defendant's omissions.

14 88. Plaintiff and the Class members paid a price premium for each of the Products  
15 that they purchased. That price premium will be determined by the fact finder at trial based  
16 on evidence adduced then. The anticipated price premium is significantly less than the full  
17 retail price of the Product.

18 89. Plaintiff and the Class therefore lost money in the amount of the price-  
19 premium paid as a result of Defendant's unlawful behavior. Plaintiff and Class members  
20 altered their position to their detriment and suffered loss in an amount equal to the amount  
21 of the price premium when they paid for the Product.

22 90. Plaintiff intends to, desires to, and will purchase the Product again when she  
23 can do so with the assurance that the Product's label is lawful and consistent with each of  
24 the Product's ingredients.

#### 24 V. DELAYED DISCOVERY

25 91. Plaintiff did not discover that Defendant's labeling of the Products was false  
26 and misleading until September 2018 when she learned the Products contained undisclosed  
27 artificial flavoring.

28 92. Plaintiff is a reasonably diligent consumer who exercised reasonable diligence

1 in her purchase and consumption of the Product. Nevertheless, she would not have been  
2 able to discover Defendant’s deceptive practices and lacked the means to discover them  
3 given that, like nearly all consumers, she relies on and is entitled to rely on the  
4 manufacturer’s obligation to label its products in compliance with state and federal law.  
5 Furthermore, Defendant’s labeling practices and non-disclosures—in particular, failing to  
6 disclose that the Product contained artificial flavoring—impeded Plaintiff’s and Class  
7 members’ abilities to discover the deceptive and unlawful labeling of the Product  
8 throughout the Class Period.

9 93. Because Defendant actively concealed its illegal conduct, preventing Plaintiff  
10 and the Class from discovering its violations of state law, Plaintiff and the Class are entitled  
11 to delayed discovery and an extended Class Period tolling the applicable statute of  
12 limitations.

## 13 VI. CLASS ACTION ALLEGATIONS

14 94. Plaintiff brings this action on behalf of herself and all others similarly situated  
15 (the “Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

16 95. The nationwide Class is defined as follows:

17 All U.S. citizens who purchased the Product in their respective state of  
18 citizenship on or after January 1, 2012 and until the Class is certified, for  
19 personal use and not for resale, excluding Defendant and Defendant’s officers,  
20 directors, employees, agents and affiliates, and the Court and its staff.

21 96. The California sub-Class is defined as follows:

22 All California citizens who purchased the Product in California on or after  
23 January 1, 2012 and until the Class is certified, for personal use and not for  
24 resale, excluding Defendant and Defendant’s officers, directors, employees,  
25 agents and affiliates, and the Court and its staff.

26 97. During the Class Period, the Product unlawfully omitted the legally-required  
27 “artificially flavored” disclosure and was otherwise improperly labeled. Defendant failed  
28 to label the Product as required by California and federal law.

98. During the Class Period, Class members purchased the unlawfully-labeled

1 Product, paying a price premium for the Product compared to similar products lawfully  
2 labeled.

3 99. The proposed Class meets all criteria for a class action, including numerosity,  
4 typicality, superiority, and adequacy of representation.

5 100. The Product is offered for sale at over 100 Starbucks locations in California  
6 alone; the Class numbers at a minimum in the tens of thousands. This action has been  
7 brought and may properly be maintained as a class action against Defendant. While the  
8 exact number and identities of other Class Members are unknown to Plaintiff at this time,  
9 Plaintiff is informed and believes that there are hundreds of thousands of Members in the  
10 Class. The Members of the Class are so numerous that joinder of all Members is  
11 impracticable and the disposition of their claims in a class action rather than in individual  
12 actions will benefit Class members, the parties, and the courts.

13 101. The proposed Class satisfies typicality. Plaintiff's claims are typical of and  
14 are not antagonistic to the claims of other Class members. Plaintiff and the Class members  
15 all purchased the Product, were deceived by the unlawful labeling, and lost money as a  
16 result, purchasing a Product that was illegal to sell in California and the United States.

17 102. The proposed Class satisfies superiority. A class action is superior to any other  
18 means for adjudication of the Class members' claims because each Class member's claim  
19 is modest, based on the Product's retail purchase price, which is generally under \$5.00 per  
20 unit. It would be impractical for individual Class members to bring individual lawsuits to  
21 vindicate such claims.

22 103. Because Defendant's misrepresentations were made on the label of the  
23 Product, all Class members including Plaintiff were exposed to and continue to be exposed  
24 to the omissions and affirmative misrepresentations. If this action is not brought as a class  
25 action, Defendant can continue to deceive consumers and violate California and federal  
26 law with impunity.

27 104. The proposed Class representative satisfies adequacy of representation.  
28 Plaintiff is an adequate representative of the Class as she seeks relief for the Class, her  
interests do not conflict with the interests of the Class members, and she has no interests



1 antagonistic to those of other Class members. Plaintiff has retained counsel competent in  
2 the prosecution of consumer fraud and class action litigation.

3 105. There is a well-defined community of interest in questions of law and fact  
4 common to the Class, and these predominate over any individual questions affecting  
5 individual Class members in this action.

6 106. Questions of law and fact common to Plaintiff and the Class include:

- 7 a. Whether Defendant failed to provide a legally-required “artificially  
8 flavored” disclosure on the Product label;
- 9 b. Whether Defendant’s labeling omissions and representations  
10 constituted false advertising under California law;
- 11 c. Whether Defendant’s conduct constituted a violation of California’s  
12 Unfair Competition Law;
- 13 d. Whether Defendant’s conduct constituted a violation of California’s  
14 Consumer Legal Remedies Act;
- 15 e. Whether Defendant’s label statements claiming fruit flavorings while  
16 omitting the use of artificial flavoring was an affirmative representation  
17 of the Product’s composition and conveyed an express warranty;
- 18 f. Whether Defendant’s conduct constitutes a breach of implied  
19 warranties under California’s Commercial Code;
- 20 g. Whether the statute of limitations should be tolled on behalf of the  
21 Class;
- 22 h. Whether the Class is entitled to restitution, rescission, actual damages,  
23 punitive damages, attorney fees and costs of suit, and injunctive relief;  
24 and
- 25 i. Whether members of the Class are entitled to any such further relief as  
26 the Court deems appropriate.

26 107. Plaintiff will fairly and adequately protect the interests of the Class, has no  
27 interests that are incompatible with the interests of the Class, and has retained counsel  
28 competent and experienced in class litigation.

1 108. Defendant has acted on grounds applicable to the entire Class, making final  
2 injunctive relief or declaratory relief appropriate for the Class as a whole.

3 109. Class treatment is therefore appropriate under Federal Rule of Civil Procedure  
4 23.

5 110. Class damages will be adduced at trial through expert testimony and other  
6 competent evidence.

7 111. On information and belief, based on publicly-available information, Plaintiff  
8 alleges that the total amount in controversy exclusive of fees, costs, and interest, based on  
9 the estimated price premium and Product revenues for sales to the Class in California  
10 during the proposed Class Period, exceeds \$5 million.

11 **VII. CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **FRAUD BY OMISSION**

14 **Cal. Civ. Code §§ 1709-1710**

15 **and the common law of all states**

16 **(on behalf of the Nationwide Class and the California Class)**

17 112. Plaintiff re-alleges and incorporates by reference the allegations made  
18 elsewhere in the Complaint as if set forth in full herein.

19 113. Plaintiff brings this claim for fraud by omission pursuant to California Civil  
20 Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of fraud are  
21 substantially similar from state to state, thus making nationwide class certification  
22 appropriate.

23 114. Defendant omitted material facts, in whole or in part, with the intent to induce  
24 Plaintiff and the members of the Class to purchase the Product. Specifically, Defendant  
25 actively concealed the truth about the Product by failing to provide the legally-required  
26 “artificially flavored” disclosure on the front label of the Product as is required by  
27 California and federal law.

28 115. Plaintiff and the Class were unaware of this omitted material fact and would  
not have purchased the Product, or would have paid less for the Product, if they had known

1 of the omitted fact.

2 116. Plaintiff and the Class suffered injuries that were proximately caused by  
3 Defendant's omissions of material facts.

4 117. Defendant's omissions were a substantial factor in causing the harm suffered  
5 by Plaintiff and the Class members as they would not have purchased the Product at all, or  
6 would have paid less for the Product, if all material facts were properly disclosed.

7 **SECOND CAUSE OF ACTION**

8 **NEGLIGENT MISREPRESENTATION**

9 **Cal. Civ. Code §§ 1709-1710**

10 **and the common law of all states**

11 **(on behalf of the Nationwide Class and the California Class)**

12 118. Plaintiff re-alleges and incorporates by reference the allegations made  
13 elsewhere in the Complaint as if set forth in full herein.

14 119. Defendant had a duty to disclose to Plaintiff and the Class members its use of  
15 artificial flavoring ingredients on the front label of the Product pursuant to California and  
16 federal law. Defendant was in a superior position than Plaintiff and the Class members  
17 such that reliance by Plaintiff and the Class members was justified. Defendant possessed  
18 the skills and expertise to know the type of information that would influence a consumer's  
19 purchasing decision.

20 120. During the applicable Class period, Defendant negligently or carelessly  
21 misrepresented, omitted, and concealed from consumers material facts regarding the  
22 products, including the use of artificial flavoring ingredients.

23 121. Defendant was careless in ascertaining the truth of its representations in that  
24 it knew or should have known that Plaintiff and the Class members would not have realized  
25 the use of artificial flavoring ingredients in the Product.

26 122. Plaintiff and the Class members were unaware of Defendant's unlawful  
27 misrepresentations and omissions and, as a result, justifiably relied on them when making  
28 the decision to purchase the Product.

123. Plaintiff and the Class members would not have purchased the Product, or

1 would have paid less for the Product, if the true facts had been known.

2 **THIRD CAUSE OF ACTION**

3 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

4 **CAL. CIV. CODE §§ 1750, *et seq.***

5 **(on behalf of the California Class)**

6 124. Plaintiff re-alleges and incorporates by reference the allegations made  
7 elsewhere in the Complaint as if set forth in full herein.

8 125. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*  
9 (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable  
10 commercial practices in connection with the sale of any goods or services to consumers.

11 126. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §  
12 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

13 127. Defendant’s failure to label the Product in compliance with federal and state  
14 labeling regulations, was an unfair, deceptive, unlawful, and unconscionable commercial  
15 practice.

16 128. Defendant’s conduct violates the CLRA, including but not limited to, the  
17 following provisions:

18 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
19 they do not have.

20 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade  
21 if they are of another.

22 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

23 § 1770(a)(16): representing the subject of a transaction has been supplied in  
24 accordance with a previous representation when it has not.

25 129. As a result of Defendant’s violations, Plaintiff and the Class suffered  
26 ascertainable losses in the form of the price premiums they paid for the unlawfully labeled  
27 and marketed Product, which they would not have paid had the Product been labeled in  
28 accordance with federal and California law, and in the form of the reduced value of the  
Product purchased compared to the Product as labeled and advertised.

1 130. On or about October 3, 2018, prior to filing this action, Plaintiff sent a CLRA  
2 notice letter to Defendant which complies with California Civil Code § 1782(a). Plaintiff  
3 sent Defendant, individually and on behalf of the proposed Class, a letter via Certified  
4 Mail, advising Defendant that it is in violation of the CLRA and demanding that it cease  
5 and desist from such violations and make full restitution by refunding the monies received  
6 therefrom. A copy of Plaintiffs' October 3, 2018 CLRA letter is attached hereto as **Exhibit**  
7 **1**.

8 131. More than thirty days have passed since Plaintiff sent Defendant her CLRA  
9 letter and Defendant has failed to take the corrective action described in Plaintiff's letter.  
10 Wherefore, Plaintiff seeks damages, restitution, injunctive relief, and attorneys' fees and  
11 costs for Defendant's violations of the CLRA.

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

14 **(UNLAWFUL PRONG)**

15 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

16 **(on behalf of the California Class)**

17 132. Plaintiff re-alleges and incorporates by reference each and every allegation  
18 contained elsewhere in this Complaint as if fully set forth herein.

19 133. Section 17200 of the California Business & Professions Code ("Unfair  
20 Competition Law" or "UCL") prohibits any "unlawful," "unfair" and "fraudulent" business  
21 practice. Section 17200 specifically prohibits any "unlawful . . . business act or practice."

22 134. The UCL borrows violations of other laws and statutes and considers those  
23 violations also to constitute violations of California law.

24 135. Defendant's practices as described herein were at all times during the Class  
25 Period and continue to be unlawful under, *inter alia*, FDA regulations and California's  
26 Sherman Law.

27 136. Among other violations, Defendant's conduct in unlawfully packaging and  
28 labeling and distributing the Product in commerce in California violated U.S. FDA and  
California packaging and labeling regulations.

1 137. The Product’s front label fails to disclose that it contains synthetic artificial  
2 flavoring in violation of 21 C.F.R. § 101.22 and California’s Sherman Law.

3 138. The Product contains fumaric acid.

4 139. The fumaric acid is an artificial flavoring material, and is included in the  
5 Product to create, simulate and reinforce the characterizing fruit flavors.

6 140. The fumaric acid in the Product is not derived from a natural source as defined  
7 in 21 C.F.R. § 101.22 and is therefore by law an artificial flavor.

8 141. Defendant fails to inform consumers of the presence of artificial flavors in the  
9 Product on the front label as required by law.

10 142. Defendant’s practices are therefore unlawful under Section 17200 *et seq.* of  
11 the California Civil Code.

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**

14 **(UNFAIR PRONG)**

15 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

16 **(on behalf of the California Class)**

17 143. Plaintiff re-alleges and incorporates by reference each and every allegation  
18 contained elsewhere in this Complaint as if fully set forth herein.

19 144. Section 17200 of the California Business & Professions Code (“Unfair  
20 Competition Law” or “UCL”) prohibits any “unfair . . . business act or practice.”  
21 Defendant’s practices violate the Unfair Competition Law “unfair” prong as well.

22 145. Defendant’s practices as described herein are “unfair” within the meaning of  
23 the California Unfair Competition Law because the conduct is unethical and injurious to  
24 California residents and the utility of the conduct to Defendant does not outweigh the  
25 gravity of the harm to consumers.

26 146. While Defendant’s decision to label the Product deceptively and in violation  
27 of California law may have some utility to Defendant in that it allows Defendant to sell the  
28 Product to consumers who otherwise would not purchase an artificially-flavored food  
product at the premium retail price, or at all, if it were labeled correctly, and to realize

1 higher profit margins than if it formulated or labeled the Product lawfully, this utility is  
2 small and far outweighed by the gravity of the harm inflicts upon California consumers.

3 147. Defendant’s conduct also injures competing food product manufacturers,  
4 distributors, and sellers that do not engage in the same unlawful, unfair, and unethical  
5 behavior.

6 148. Moreover, Defendant’s practices violate public policy expressed by specific  
7 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False  
8 Advertising Law, and the FDA regulations cited herein.

9 149. Plaintiff’s and all California class members’ purchases of the Product took  
10 place in California.

11 150. Defendant labeled the Product in violation of federal regulations and  
12 California law requiring truth in labeling.

13 151. Defendant consciously failed to disclose material facts to Plaintiff and the  
14 Class in Defendant’s advertising and marketing of the Product.

15 152. Defendant’s conduct is unconscionable because, among other reasons, it  
16 violates 21 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to  
include:

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

21 153. Defendant’s conduct is also “unconscionable” because it violates, *inter alia*,  
22 21 C.F.R. § 101.22, which requires all food products for which artificial flavoring provides  
23 a characterizing flavor to disclose this fact prominently and conspicuously on the product’s  
24 front label.

25 154. Defendant intended that Plaintiff and the Class rely on Defendant’s acts and  
26 omissions to induce them to purchase the Product.

27 155. Had Defendant disclosed all material information regarding the Product,  
28 Plaintiff and the Class would not have purchased the Product or would only have been

1 willing to pay less for the Product than they did.

2 156. Plaintiff and the Class suffered injury in fact and lost money or property as a  
3 result of Defendant's deceptive advertising: they were denied the benefit of the bargain  
4 when they purchased the Product based on Defendant's violation of the applicable laws  
5 and regulations, and purchased the Product in favor of competitors' products, which are  
6 less expensive, contain no artificial flavoring, or are lawfully labeled.

7 157. The acts, omissions, and practices of Defendant detailed herein proximately  
8 caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form  
9 of, *inter alia*, the price premium of monies spent to purchase the Product, and they are  
10 entitled to recover such damages, together with appropriate penalties, including restitution,  
11 damages, attorneys' fees and costs of suit.

12 158. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading  
13 advertising." For the reasons set forth above, Defendant engaged in unfair, deceptive,  
14 untrue and misleading advertising in violation of California Business & Professions Code  
15 § 17200.

16 159. Pursuant to California Business & Professions Code § 17203, Plaintiff seeks  
17 an order requiring Defendant to immediately cease such acts of unlawful, unfair, and  
18 fraudulent business practices and requiring Defendant to return to the Class the amount of  
19 money improperly collected.

20 **SIXTH CAUSE OF ACTION**

21 **VIOLATION OF THE FALSE ADVERTISING LAW**

22 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

23 **(on behalf of the California Class)**

24 160. Plaintiff re-alleges and incorporates by reference each and every allegation  
25 contained elsewhere in this Complaint as if fully set forth herein.

26 161. Defendant manufactured, packaged, labeled, advertised, and distributed, in  
27 California and in interstate commerce, a Product that unlawfully failed to disclose the  
28 presence of artificial flavoring as required by federal and state food labeling regulations.

162. Under California's False Advertising Law ("FAL"), Business and Professions



1 Code § 17500 *et seq.*,

2 “It is unlawful for any person, firm, corporation or association, or any employee  
3 thereof with intent directly or indirectly to dispose of real or personal property . . .  
4 to make or disseminate or cause to be made or disseminated before the public in this  
5 state, or to make or disseminate or cause to be made or disseminated from this state  
6 before the public in any state, in any newspaper or other publication, or any  
7 advertising device . . . any statement, concerning that real or personal property . . .  
8 which is untrue or misleading, and which is known, or which by the exercise of  
9 reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. & Prof.  
10 Code § 17500.

11 163. Defendant’s labeling and advertising statements on the Product’s labels and  
12 in advertising and marketing materials are “advertising device[s]” under the FAL.

13 164. Defendant’s labeling and advertising statements, omitting from consumers  
14 that the Product contains a synthetic artificial flavor, were unlawful and misleading, and  
15 Defendant at a minimum by the exercise of reasonable care should have known those  
16 actions were unlawful or misleading.

17 165. Defendant’s conduct violated California’s False Advertising Law.

18 **SEVENTH CAUSE OF ACTION**

19 **BREACH OF EXPRESS WARRANTIES**

20 **CAL. COMM. CODE § 2313**

21 **(on behalf of the California Class and all states with substantially similar laws)**

22 166. Plaintiff re-alleges and incorporates by reference each and every allegation  
23 contained elsewhere in this Complaint as if fully set forth herein.

24 167. The Product’s front label misleadingly claims by operation of California law  
25 that the Product is flavored only with the listed characterizing flavors.

26 168. The Product’s front label fails to disclose the use of artificial flavoring,  
27 “immediately and conspicuously preced[ing] or follow[ing]” the names of the  
28 characterizing flavors, as required by law. *See* 21 C.F.R. 101.22(i)(3).

169. The failure to disclose the use of artificial flavoring on the Product’s front

1 label, by operation of law, informs consumers that the Product does not contain artificial  
2 flavors.

3 170. Starbucks' health and wellness campaign further reinforced reasonable  
4 consumers' beliefs that the Product did not contain artificial flavors.

5 171. These promises became part of the basis of the bargain between the parties  
6 and thus constituted express warranties, which Defendant breached. The Product does not  
7 solely contain apple, watermelon, tangerine, and lemon flavors as the label suggests – it  
8 contains *artificial* apple, watermelon, tangerine, and lemon flavors.

9 172. Defendant sold the good to Plaintiff and Class members who bought the good  
10 from Defendant.

11 173. As a result, Plaintiff and the Class did not receive the good as warranted by  
12 Defendant.

13 174. Within a reasonable amount of time after Plaintiff discovered that the Product  
14 contained synthetic ingredients, Plaintiff notified Defendant of such breach.

15 175. As a proximate result of this breach of warranty by Defendant, Plaintiff and  
16 the Class have been damaged in an amount to be determined at trial.

17 **EIGHT CAUSE OF ACTION**

18 **BREACH OF IMPLIED WARRANTIES**

19 **CAL. COMM. CODE § 2314**

20 **(on behalf of the California Class and all states with substantially similar laws)**

21 176. Plaintiff re-alleges and incorporates the allegations made elsewhere in the  
22 Complaint as if set forth in full herein.

23 177. Defendant's label representations also created implied warranties that the  
24 product was suitable for a particular purpose, specifically as a snack product containing no  
25 artificial flavors, and created implied warranties by operation of California statute.

26 178. Defendant breached these warranties.

27 179. Because the Product does not contain an "artificially flavored" disclosure as  
28 required by law, the Product's front label misleadingly implies that the Product is not  
flavored with artificial ingredients.

1 180. As alleged in detail above, at the time of purchase Defendant had reason to  
2 know that Plaintiff, as well as all members of the Class, intended to use the Product as a  
3 food product that did not contain artificial flavoring.

4 181. This became part of the basis of the bargain between the parties.

5 182. Based on that implied warranty, Defendant sold the goods to Plaintiff and  
6 other Class members who bought the goods from Defendant.

7 183. At the time of purchase, Defendant knew or had reason to know that Plaintiff  
8 and the Class members were relying on Defendant's skill and judgment to select or furnish  
9 a product that was suitable for this particular purpose, and Plaintiff and the Class justifiably  
10 relied on Defendant's skill and judgment.

11 184. The Product was not suitable for this purpose.

12 185. Plaintiff purchased the Product believing it had the qualities Plaintiff sought,  
13 based on the deceptive advertising and labeling, but the Product was actually unsatisfactory  
14 to Plaintiff for the reasons described herein.

15 186. Further, the Product was not merchantable in California because it was not of  
16 the same quality as other products in the category generally acceptable in the trade.

17 187. The Product would not pass without objection in the trade when packaged  
18 with the existing labels, because the Product was illegal to sell in California. Cal. Comm.  
19 Code 2314(2)(a).

20 188. The Product also was not acceptable commercially and breached its implied  
21 warranty because the Product was not adequately packaged and labeled as required. Cal.  
22 Comm. Code 2314(2)(e).

23 189. The Product also was not commercially acceptable and breached its implied  
24 warranty because it did not conform to the implied promises made on the container or label,  
25 Cal. Comm. Code 2314(2)(f), and other grounds as set forth in Commercial Code section  
26 2314(2).

27 190. By offering the Product for sale and distributing the Product in California,  
28 Defendant also warranted that the Product was not unlawful and was legal to purchase in  
California. Because the Product was unlawful and was therefore illegal to sell or offer for

1 sale in California, Defendant breached this warranty as well.

2 191. As a result of this breach, Plaintiff and the Class did not receive goods as  
3 impliedly warranted by Defendant.

4 192. Within a reasonable amount of time after the Plaintiff discovered that the  
5 Product contained synthetic flavoring ingredients, Plaintiff notified Defendant of such  
6 breach.

7 193. As a proximate result of this breach of warranty, Plaintiff and the Class have  
8 been damaged in an amount to be determined at trial.

9 194. As a result, Plaintiff, the Class, and the general public are entitled to injunctive  
10 and equitable relief, restitution, and an order for the disgorgement of the funds by which  
11 Defendant was unjustly enriched.

12 **VIII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the  
14 general public, pray for judgment against Defendant as follows:

- 15 A. An order confirming that this action is properly maintainable as a class action  
16 as defined above;
- 17 B. An order appointing Plaintiff as class representative and The Law Office of  
18 Ronald A. Marron as counsel for the Class;
- 19 C. An order requiring Defendant to bear the cost of Class notice;
- 20 D. An order declaring that the conduct complained of herein violates the CLRA;
- 21 E. An order declaring that the conduct complained of herein violates the UCL;
- 22 F. An order declaring that the conduct complained of herein violates the FAL;
- 23 G. An order declaring that the conduct complained of herein breached express  
24 warranties, implied warranties, or both;
- 25 H. An order requiring Defendant to disgorge any benefits received from Plaintiff  
26 and any unjust enrichment realized as a result of the unlawful and deceptive  
27 labeling, advertising, and marketing of the Product;
- 28 I. An order requiring Defendant to pay restitution and damages to Plaintiff and  
Class members so that they may be restored any money which was acquired

1 by means of any unfair, deceptive, unconscionable or negligent acts;

2 J. An award of punitive damages in an amount to be proven at trial;

3 K. An order enjoining Defendant’s unlawful and unfair practices;

4 L. An order requiring Defendant to conduct corrective advertising;

5 M. An award of pre-judgment and post-judgment interest;

6 N. An award of attorney fees and costs; and

7 O. Such other and further relief as this Court may deem just, equitable, or proper.

8 **IX. JURY DEMAND**

9 Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek a  
10 jury trial for claims sounding in equity.

11 DATED: March 15, 2019

12 Respectfully Submitted,

13 */s/ Ronald A. Marron*

14 Ronald A. Marron

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