	Case 3:19-cv-03052-SI Document 11	Filed 06/25/19 Page 1 of 23
1 2 3 4 5 6 7 8 9 10 11		75 DISTRICT COURT ICT OF CALIFORNIA
12 13 14 15 16 17 18 19 20 21 20 21 22 23 24 25 26 27	JOHN PELS, on behalf of himself and all others similarly situated, Plaintiff, v. KEURIG DR. PEPPER. INC., a Delaware corporation, Defendants.	Case No. 4:19-cv-03052-DMR AMENDED CLASS ACTION COMPLAINT FOR: 1. VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT; 2. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW; 3. VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW: and 4. UNJUST ENRICHMENT
28	CLASS ACTIC	N COMPLAINT

Plaintiff John Pels, on behalf of himself and all others similarly situated,
 through his undersigned attorneys, alleges this Amended Class Action Complaint
 against Defendant Keurig Dr. Pepper. Inc. ("Keurig") on actual knowledge as to his
 own acts, and on information and belief after due investigation as to all other
 allegations, as follows:

#### **NATURE OF THE ACTION**

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8 1. This is a consumer class action against Keurig, one of the world's
9 largest bottlers and distributors of bottled water and flavored beverages.

Plaintiff is a California consumer who, within the Class Period alleged
 herein, purchased and consumed bottled beverages distributed as part of Keurig's
 popular Peñafiel brand. This brand consists of about 14 different Peñafiel varieties
 including Peñafiel Mineral Spring Water, the particular variety Plaintiff purchased.

14 Peñafiel Mineral Spring Water has been contaminated by toxic levels 3. 15 of arsenic for many years. Indeed, the FDA detected these unlawful arsenic levels 16 on more than one occasion and, since 2009, New Jersey regulators have found 17 arsenic levels in this brand that exceeded the legal limit by more than 100%. Keurig 18 disregarded the danger, did not shut down operations at its Peñafiel plant in Mexico, 19 and did not undertake remedial measures until demanded to do so by Plaintiff herein 20 On June 21, 2019, Keurig belatedly issued a in his previous Complaint. 21 "withdrawal" of the contaminated bottles of Mineral Spring Water. Up until then, however, Keurig had concealed that thousands of its customers were ingesting 22 23 bottled water that contained unsafe levels of arsenic, a known poison.

4. Keurig's wrongdoing was first reported in a 2019 exposé in *Consumer Reports.* Of the many water brands tested by *Consumer Reports,* Peñafiel water was
the only brand that exhibited such high toxicity.

27 5. Peñafiel is part of Dr. Pepper Snapple Group, owned by Defendant
28 Keurig, which markets more than 50 beverage brands throughout North America,

1 including the Mineral Spring Water. It is possible that other Peñafiel varieties—if
2 they draw water from the same source—are similarly dangerous to unsuspecting
3 consumers.

4 6. Plaintiff and all members of the Class (defined herein as "all consumers 5 nationwide who purchased any Peñafiel beverage within the applicable statute(s) of 6 limitations") and Sub-Class (Class members purchased while in California) have 7 been injured by the acts alleged herein. In this Amended Complaint, Plaintiff seeks 8 restitution and injunctive relief under the Unfair Competition Law (UCL), the False 9 Advertising Law (FAL), and the Consumer Legal Remedies Act (CLRA), as well as 10 damages under the CLRA upon the expiration of the 30-day notice period. Plaintiff 11 also asserts a claim for unjust enrichment.

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#### JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action
pursuant to 28 U.S.C. § 1332(d), enacted pursuant to the Class Action Fairness Act
("CAFA"). Plaintiff, a citizen of California, has alleged a nationwide Class and a
California subclass and as such the citizenship of at least one Class member is
different from that of the Defendant, a Massachusetts and Delaware citizen.

19 8. Defendant is a Delaware corporation, headquartered in Massachusetts.
20 The amount in controversy exceeds the sum of \$5,000,000. Accordingly, the
21 minimal diversity required under the CAFA is easily satisfied.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because
Plaintiff and many Class members are citizens of this District. Moreover, Defendant
regularly transacts and continues to transact business in this District.

10. This Court has *in personam* jurisdiction over the Defendant because, *inter alia*, Defendant: (a) transacted business in this District; (b) maintained
continuous and systematic contacts in this District prior to and during the Class
Period; and (c) purposefully availed itself of the benefits of doing business in this

1 District. Accordingly, the Defendant maintains minimum contacts with this District 2 which are more than sufficient to subject it to service of process and to comply with 3 due process of law requirements.

#### **PARTIES**

Plaintiff Pels is an individual, resident in Sonoma County, California 6 11. 7 and a citizen of California. During the Class Period (as defined below) Plaintiff 8 purchased Peñafiel Mineral Spring Water, was deceived by Defendant in that he was 9 of the belief he was obtaining a safe product made in conformity with the law, and 10 suffered an ascertainable loss and monetary damages as a result of Defendant's 11 unlawful conduct alleged herein. Should Defendant reform its conduct, and adhere 12 to proper standards, Plaintiff will resume buying Peñafiel bottled water.

13 12. Defendant Keurig is a for-profit corporation formed and existing under 14 the laws of the State of Delaware with its principal place of business at 83 South 15 Avenue, Burlington, Massachusetts 01803, and thus is a citizen of Delaware and 16 Massachusetts.

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#### FACTUAL ALLEGATIONS

19 The demand for bottled water continues to grow in the United States 13. and internationally. Consumers believe bottled water is healthy, unadulterated and 20 21 more flavorful in many cases than tap water.

Trade organizations like the International Bottled Water Association 22 14. 23 work hard to reinforce in the public mind that bottled water is safely sourced and 24 subject to stringent testing:

25 Once the water enters the bottled water plant several processes are 26 employed to ensure that it meets the U.S. Food and Drug Administration (FDA) purified water standard. These treatments can include utilizing a multi-barrier approach. Measures in a multi-28

barrier approach may include one or more of the following: reverse osmosis, distillation, micro-filtration, carbon filtration, ozonation, and ultraviolet (UV) light. The finished water product is then placed in a sealed bottle under sanitary conditions and sold to the consumer.

Moreover, the water from public water systems is often compromised after emergency situations or natural disasters (e.g., hurricanes, floods, tornados, fires, or boil alerts). During these times, bottled water is a necessary and reliable alternative to deliver clean, safe drinking water.<sup>1</sup>

9 15. Bottled water is subject to comprehensive government regulation at
10 both the federal and state level. In addition, the International Bottled Water
11 Association (IBWA) has adopted industry standards (IBWA Bottled Water Code of
12 Practice) that are, in some instances, more stringent than FDA or EPA requirements.
13 As mandated by federal law, FDA's bottled water standards must be no less
14 stringent and no less protective of the public health than EPA's regulations for
15 public drinking water.

16 16. Both the FDA and the EPA are underfunded and understaffed.
17 Accordingly, they sometimes limit themselves to notifying distributors of a problem,
18 and expecting them to act responsibly in rectifying it. Most such companies do act
19 responsibly. Others, like Keurig here, do not.

20 17. One of the chief concerns about any drinking water is that it may
21 become contaminated by either naturally occurring (yet harmful) substances, or by
22 artificial toxins.

18. Arsenic is poisonous to humans and regulations exist to limit the
amount of arsenic in drinking water. Since arsenic is a naturally occurring element
it may leach into water sources used for drinking unless detected and filtered out. If
it is not, this poses a serious public health risk. For example:

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**<sup>28</sup>** Bottled Water Vs. Tap Water, International Bottled Water Association, available at: https://www.bottledwater.org/health/bottled-water-vs-tap-water

1 It Damages the Heart: CNN reported on May 7, 2019: (a) 2 "Young adults free of diabetes and cardiovascular disease developed heart damage 3 after only five years of exposure to low-to-moderate levels of arsenic commonly 4 found in groundwater. This was the finding of a study published Tuesday in 5 Circulation: Cardiovascular Imaging, an American Heart Association Journal. 6 "Low-level arsenic exposure is associated with a disproportionate growth of the 7 heart independent of hypertension and other traditional risk factors," the study's lead 8 author, Dr. Gernot Pichler, wrote. "The higher the arsenic content in drinking water, 9 the greater the damage to the heart."

10 (b) It is a Carcinogen: The International Agency for Research on
11 Cancer (IARC), part of the World Health Organization (WHO), has one of its major
12 goals to identify causes of cancer. IARC classifies arsenic and inorganic arsenic
13 compounds as "carcinogenic to humans." This is based on sufficient evidence in
14 humans that these compounds can cause: lung cancer, bladder cancer and skin
15 cancer.

16 It can Lead To Kidney Disease: Arsenic exposure can lead to (c) 17 chronic kidney disease and kidney fibrosis. Numerous scientific studies have shown 18 that arsenic exposure led to various forms of renal dysfunction. Normally after an 19 acute kidney injury, kidney cells regrow to recover the organ's function. However, 20 chronic exposure to toxicants, like arsenic, injures the kidneys repeatedly and leads 21 to the development of chronic kidney disease, an irreversible condition for which 22 there is no current treatment. Worse still, chronic kidney disease is progressive and 23 leads to kidney failure.

(d) It Increases the Risk of Diabetes: Science Daily reported in
25 2018 that chronic exposure to arsenic interferes with insulin secretion in the
26 pancreas, which may increase the risk of diabetes. It drew on research published in
27 the American Journal of Physiology -- Regulatory, Integrative and Comparative
28 Physiology.

### CLASS ACTION COMPLAINT

19. Under federal and state standards, companies like Keurig are required to ensure that water and water-based products contain arsenic levels no higher than 10 parts per billion (ppb). The FDA has advised:

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). *Bottled water that is of a quality below the prescribed standard is required by* § 165.110(c) to be labeled with a statement of *substandard quality*. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.<sup>2</sup>

15 20. Peñafiel water was first bottled in Mexico in 1948 by the Peñafiel
16 family. It became wildly popular. Large companies became interested in it—after a
17 period during which it was owned and run by Cadbury Schweppes, it was acquired
18 (and is now run) by Keurig's Dr. Pepper Snapple Group unit. The bottling
19 operations remain in Mexico.

20 21. No later than 2013, high levels of arsenic were detected in Peñafiel
21 water during an inspection of a company named R.R. Importaciones Inc. in Passaic,
22 New Jersey. The proprietor represented that he had only imported the product for
23 personal use in 2012, yet one year later dozens of bottles from that same distributor
24 were ordered destroyed. Keurig has disclaimed knowledge of this incident, yet it
25 may be inferred that high levels of arsenic were in Peñafiel water as early as 2012.
26 It is difficult to understand how Keurig would not know the destination of bottles it

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**28** Available at: https://www.federalregister.gov/documents/2004/12/02/04-26531/beveragesbottled-water

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#### CLASS ACTION COMPLAINT

exported to the United States. One recent report, in *Business Insider*, states that
 New Jersey regulators detected unlawful levels of arsenic as early as 2009.

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22. In 2015 and again in early 2018, the FDA issued import alerts entitled: "Detention Without Physical Examination of Bottled Water due to Arsenic \*\*\*and Flavored Water Beverages\*\*\* Due to Inorganic Arsenic." Among the producers listed was Peñafiel; the toxic products were identified as carbonated water (March 4, 2015) and mineral water (April 4, 2018). Nonetheless the issue persisted and import of these dangerous products continued into the United States unabated.

9 23. On April 18, 2019 Consumerreports.org published an article entitled,
10 "Arsenic in Some Bottled Water Brands at Unsafe Levels, Consumer Reports
11 Says. "<sup>3</sup> The article reflects Consumer Reports' independent review of various
12 brands of bottled water. Only 11 brands out of 130 tested had detectable levels of
13 arsenic. Peñafiel water stood alone in exhibiting a high level of toxicity—70%
14 above the legal standard:

As part of our investigation, CR also was able to purchase two brands of imported water—Jermuk from Armenia and Peñafiel from Mexico that are on an import alert issued by the federal government for previously having arsenic levels above the federal limit of 10 ppb. Such an alert is meant to "prevent potentially violative products from being distributed in the United States," according to the Food and Drug Administration. Even so, CR easily purchased the two brands in retail stores in two states and on Amazon.

- Beverage giant Keurig Dr. Pepper provided CR in March with Peñafiel's bottled water quality report for 2018, *which stated that the water had nondetectable amounts of arsenic*. But the company said
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- **28** || <sup>3</sup> Available at: https://www.consumerreports.org/water-quality/arsenic-in-some-bottled-water-brands-at-unsafe-levels/
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#### CLASS ACTION COMPLAINT

this week that it had conducted new testing, because of CR's questions, and confirmed levels above the federal limit, at an average of 17 ppb. "An arsenic level of 17 ppb is a clear violation of the federal bottled water standard of 10 ppb," says Jean Halloran, director of food policy initiatives at CR.

6 The Mexican government's Office of the Federal Prosecutor for the 24. 7 Consumer has now started an investigation of its own, and Keurig has been asked to 8 supply information about the product. On April 29, 2019, MexicoNow reported that: 9 "Peñafiel could be liable to a fine worth US \$21,000 in case of failure to comply 10 with the information requested by Procuraduría Federal del Consumidor (Profeco), 11 with the intention of continuing the investigation on the alleged presence of high 12 levels of arsenic in said mineral water product." The article further stated: "Peñafiel 13 has not answered the official questionnaires that were notified [sic] and has until 14 today (Monday) to do so," said the head of the Profeco, Ricardo Sheffield Padilla.

15 25. On June 21, 2019, Keurig issued the following statement (in relevant
16 part):

Keurig Dr Pepper Announces Voluntary Withdrawal of Unflavored Peñafiel Mineral Spring Water that Does Not Meet FDA Bottled Water Quality Standards

BURLINGTON, Mass. and PLANO, Texas, June 21, 2019 /PRNewswire/ -- Keurig Dr Pepper today announced it will voluntarily withdraw Peñafiel unflavored mineral spring water products, imported from Mexico, due to the presence of violative levels of arsenic. Arsenic when present in the diet at very high levels, well above those detected in recent samples of Peñafiel, is associated with numerous chronic diseases. Water quality tests of Peñafiel samples conducted by an independent laboratory on behalf of Keurig

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Dr Pepper detected arsenic at levels that exceeded the FDA's bottled water standards for mineral water of 10 ppb.

All unflavored Peñafiel mineral spring water products including 600mL and 1.5L of all date codes are included in this voluntary withdrawal. The product is packaged in PET bottle formats. Consumers who have this product in their possession can return it to their retailer for a full refund.

8 26. No provision has been made for those who ingested this product prior
9 to this withdrawal. Hazardous water is of no use and of no value to consumers, and
10 threatens their health. Keurig has acted irresponsibly and unlawfully in connection
11 with Peñafiel water, and appears to have engaged in an attempt to conceal the truth.

12 27. For the foregoing reasons, Plaintiff brings this action for damages,
13 restitutionary relief and injunctive relief.

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#### **CLASS ACTION ALLEGATIONS**

16 28. Plaintiff brings this action as a class action pursuant to Rules 23(a) and
17 23(b)(2) and 23 (b)(3) of the Federal Rule of Civil Procedure, seeking damages,
18 restitutionary relief and injunctive relief under state consumer protection statutes
19 and/or the common law on behalf of himself and all members of the Class and
20 California Sub-Class defined below.

21 29. The "Class" consists of all United States consumers who purchased any
22 Peñafiel beverage that exceeded permitted arsenic levels within the applicable
23 statute(s) of limitations. The "California Sub-Class" consists of all California
24 consumers who purchased any Peñafiel beverage that exceeded permitted arsenic
25 levels within the applicable statute(s) of limitations.

30. The Class and California Subclass for whose benefit this action is
brought is so numerous that joinder of all members is impracticable. While the
exact number and identities of the persons who fit within each proposed class are

presently unknown, it includes thousands of persons and the exact number can be
 ascertained from Defendant's records or by resort to vendor records. Peñafiel
 beverages are sold by Target, Wal-mart, Instacart and over Amazon.com.

4 31. <u>Common Questions Predominate</u>: This action involves common
5 questions of law and fact to the Class and California Sub-Class because each Class
6 and California Sub-Class Member's claim derives from the same allegedly unlawful
7 and deceptive action. The common questions of law and fact involved predominate
8 over questions that affect only Plaintiff or individual Class Members. Thus, proof
9 of a common or single set of facts will establish the right of each member of the
10 Class to recover.

11 32. Among the questions of law and fact common to the Class and
12 California Sub-Class are:

a. Whether Defendant marketed and sold any Peñafiel beverage
which exceeded the established arsenic limits;

b. Whether Defendant's actions were deceptive and misleading in
connection with marketing and sale of Peñafiel beverages;

17 c. Whether Defendant engaged in the course of conduct complained18 of herein;

19 d. Whether Defendant's marketing and offer for sale the items on
20 the website constitutes a deceptive practice; and

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e.

The proper measure of damages.

33. <u>Typicality</u>: Plaintiff's claims are typical of the Class and California
Sub-Class because he bought a Peñafiel Mineral Spring Water beverage during the
Class Period. Defendant's allegedly deceptive actions concern the same business
practices described herein. Thus, Plaintiff, the Class and California Sub-Class
Members sustained the same injuries and damages arising out of Defendant's
conduct in violation of law. The injuries and damages of each Class and California

1 Sub-Class Member were caused directly by Defendant's wrongful conduct in 2 violation of law as alleged herein.

3 34. Adequacy: Plaintiff will fairly and adequately protect the interests of all 4 Class and California Sub-Class Members because it is in their best interests to 5 prosecute the claims alleged herein to obtain full compensation they are due for the 6 illegal conduct of which they complain. Plaintiff also has no interests that conflict 7 with or are antagonistic to the interests of Class and California Sub-Class Members. 8 Plaintiff has retained highly competent and experienced class action attorneys to 9 represent their interests and that of the Class and California Sub-Class. No conflict 10 of interest exists between Plaintiff, the Class and California Sub-Class Members 11 because all questions of law and fact regarding liability of Defendant are common to 12 the Class and California Sub-Class Members and predominate over the individual 13 Plaintiff and his counsel have the necessary financial issues that may exist. 14 resources to adequately and vigorously litigate this class action, and Plaintiff and 15 counsel are aware of their fiduciary responsibilities to the Class and California Sub-16 Class Members and are determined to diligently discharge those duties seeking the 17 maximum possible recovery for the Class and California Sub-Class Members.

18 35. <u>Superiority</u>: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by 19 20 members of the Class and California Sub-Class will tend to establish inconsistent 21 standards of conduct for Defendant and result in the impairment of Class and California Sub-Class Members' rights and disposition of their interests through 22 23 actions to which they were not parties. Class action treatment will permit a large 24 number of similarly situated persons to prosecute their common claims in a single 25 forum simultaneously, efficiently, and without the unnecessary duplication of effort 26 and expense that numerous individual actions would engender. Furthermore, as the 27 damages suffered by each individual member of the Class and California Sub-Class 28 may be relatively small, the expenses and the burden of individual litigation would make it difficult or impossible for individual members of the Class and California
 Sub-Class to redress the wrongs done to them, while an important public interest
 will be served by addressing the matter as a class action.

36. The prerequisites to maintaining a class action for injunctive or
equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted
or refused to act on grounds generally applicable to the Class, thereby making
appropriate final injunctive or equitable relief with respect to the Class and
California Sub-Class as a whole.

9 37. Plaintiff is unaware of any difficulties that are likely to be encountered
10 in the management of this action that would preclude its maintenance as a class
11 action.

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#### FIRST CLAIM FOR RELIEF

# (Violation of California's Consumers Legal Remedies Act ("CLRA") Cal. Civ. Code §§ 1750, *et seq.*-- California Sub-Class)

16 38. Plaintiff realleges and incorporates by reference all previous allegations
17 of the Complaint as if they were set forth in full herein.

18 39. This Claim is brought pursuant to CLRA, California Civil Code §§
19 1750, *et seq.*

40. CLRA prohibits any unfair, deceptive, and/or unlawful practices, as
well as unconscionable commercial practices in connection with the sale of any
goods or services to consumers. *See* Cal. Civ. Code § 1770. The CLRA "shall be
liberally construed and applied to promote its 15 underlying purposes, which are to
protect consumers against unfair and deceptive business 16 practices and to provide
efficient economical procedures to secure such protection." Cal. Civ. Code § 1760.

26 41. Defendant is a "person" under the CLRA. Cal. Civ. Code § 1761(c).
27 Plaintiff is a "consumer" under the CLRA. Cal. Civ. Code § 1761(d). The Peñafiel
28 beverages are "good(s)" under the CLRA, Cal. Civ. Code § 1761(a). Plaintiff's

purchase of the Peñafiel beverages constitute a "transaction[]" under the CLRA.
 Cal. Civ. Code § 1761. Defendant's actions and conduct described herein constitute
 transactions that have resulted in the sale of goods to consumers.

4 42. Defendant's failure to conform the Peñafiel beverages' contents to
5 required safety standards is an unfair, deceptive, unlawful, and unconscionable
6 commercial practice.

7 43. As a result, Defendant's conduct violates several provisions of the
8 CLRA, including, but not limited to:

9 a. 1770(a)(5): Representing that goods or services have 10 sponsorship, *approval*, *characteristics*, *ingredients*, *uses*, *benefits*, or quantities that 11 they do not have-here, each Peñafiel beverage carried with it the impression that it 12 was a safe, legally compliant product which consumers could use without risking 13 serious illness; and

b. 1770(a)(7): Representing that goods or services are of a
particular standard, quality, or grade, or that goods are of a particular style or model,
if they are of another—as above, each Peñafiel beverage carried with it the
impression that it was a safe, legally compliant product which consumers could use
without risking serious illness.

44. As a result of Defendant's violations, pursuant to Cal. Civ. Code
1780(a)(2) Plaintiff is entitled to an injunction to prevent the wrongdoing from
continuing. In addition, Plaintiff has sent a notice of these claims to the Defendant
in accordance with the CLRA, and such notice was received on or about June 19,
2019. Should such Notice not lead to adequate Class-wide relief within 30 days of
receipt, Plaintiff herein will have the right to recover damages, and therefore asserts
such damages claims now pending expiration of the 30-day period.

45. In accordance with Cal. Civ. Code § 1780(d), Plaintiffs have attached a
"venue affidavit" to this Amended Complaint, showing that this action has been
commenced in the proper county.

1 SECOND CLAIM FOR RELIEF 2 (Violation of California's Unfair Competition Law ("UCL") 3 Cal. Bus. & Prof. Code §§ 17200, et seq. - Unlawful Prong-4 **California Sub-Class**) 5 46. Plaintiff realleges and incorporates by reference all previous allegations 6 of the Complaint as if they were set forth in full herein. 7 47. Section 17200 of the California Business & Professions Code, known 8 as the Unfair Competition Law ("UCL"), prohibits any "unlawful, unfair or 9 fraudulent business act or and unfair, deceptive, untrue or misleading advertising 10 ...." Section 17200 specifically prohibits any "unlawful ... business act or practice." 11 48. The UCL borrows violations of other laws and statutes and considers 12 those violations also to constitute violations of California law. 13 49. Defendant's conduct was and continues to be unlawful under FDA regulations. 14 15 50. Defendant's conduct in unlawfully offering for sale and selling Peñafiel 16 beverages that are unlawfully contaminated by arsenic is without excuse or justification. 17 18 51. Defendant has violated the FDA arsenic level rules which make it 19 unlawful to disseminate beverage containing arsenic at levels higher than 10 ppb. 20 Pursuant to California Business & Professions Code § 17203, Plaintiff 52. 21 seeks an order requiring Defendant to immediately cease the above described 22 unlawful acts. In addition, Plaintiff seeks restitution for himself and for the Class. 23 24 THIRD CLAIM FOR RELIEF 25 (Violation of California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200, et seq. - Unfair Prong--California Sub-Class) 26 27 53. Plaintiff realleges and incorporates by reference all previous allegations 28 of the Complaint as if they were set forth in full herein.

54. Section 17200 of the California Business & Professions Code (the
 "UCL") prohibits any "unlawful, unfair or fraudulent business act or and unfair,
 deceptive, untrue or misleading advertising ..." Section 17200 specifically prohibits
 any "unfair ...business act or practice." Defendant's practices violate the UCL's
 "unfair" prong.

6 A business act or practice is "unfair" under the UCL if the reasons, 55. 7 justifications, and motives of the alleged wrongdoer are outweighed by the gravity 8 of the harm to the alleged victims. A business act or practice is also "unfair" under 9 the UCL if a defendant's conduct is immoral, unethical, oppressive, unscrupulous, 10 or substantially injurious to consumers. A business act or practice is also "unfair" 11 under the UCL where the consumer injury is substantial, the injury is not 12 outweighed by any countervailing benefits to consumers or competition, and the 13 injury is one that consumers themselves could not reasonably have avoided considering the available alternatives.

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15 56. Defendant's conduct, as detailed herein, constitutes unfair business
16 practices. Defendant's practices, as described herein, are "unfair" within the
17 meaning of the UCL because the conduct is unethical and injurious to California
18 residents, and the utility of the conduct to Defendant does not outweigh the gravity
19 of the harm to consumers, including Plaintiff and Class Members.

20 57. While Defendant's decision to market the Peñafiel beverages despite
21 their violative nature and in violation of federal and California law may have utility
22 to Keurig in that it allows Defendant to sell more Peñafiel beverages without
23 incurring high compliance costs, this is exactly the type of conduct which the law
24 prohibits.

25 58. Defendant's misconduct not only injures the persons who purchase the
26 Peñafiel beverages, but it also injures also injures competing food product
27 manufacturers, distributors, and sellers that do not engage in the same unfair and
28 unethical conduct, and who do filter their beverages.

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

60. Pursuant to California Business & Professions Code § 17203, Plaintiff
seeks an order requiring Defendant to immediately cease such acts of unlawful,
unfair, and/or fraudulent business practices. In addition, Plaintiff seeks restitution
for himself and for the Class.

#### FOURTH CLAIM FOR RELIEF

# (Violation of California's False Advertising Law ("FAL") Cal. Bus. & Prof. Code §§ 17500, *et seq.*--California Sub-Class)

13 61. Plaintiff realleges and incorporates by reference all previous allegations
14 of the Complaint as if they were set forth in full herein.

15 62. Defendant made and distributed, in California and in interstate
16 commerce, the Peñafiel beverages wherein the product was adulterated with high
17 levels of arsenic.

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63. The FAL states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by

#### Case 3:19-cv-03052-SI Document 11 Filed 06/25/19 Page 18 of 23

public outcry or proclamation, or in any other manner or means whatever, including the over Internet, any statement. concerning that real personal or those services. or property professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to or those services, sell that personal property professional or otherwise, so advertised at the price stated therein, or as so advertised.

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64. Defendant's business practices as alleged herein constitute unfair, deceptive, untrue and misleading advertising pursuant to California's FAL because Defendant advertised the Peñafiel beverages in a manner that is untrue and misleading, and that is known or reasonably should have been known to Defendant to be untrue or misleading, as Defendant created the impression that the product was safe to consume when, in fact, it was not.

65. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff seeks an order of this Court enjoining Defendant from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in the Complaint. In addition, Plaintiff seeks restitution for himself and for the Class.

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#### **FIFTH CLAIM FOR RELIEF**

#### (Unjust Enrichment – Nationwide Class)

3 66. Plaintiff realleges and incorporates by reference all previous allegations
4 of the Complaint as if they were set forth in full herein.

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67. Defendant has been unjustly enriched to Plaintiff's and the Class members' detriment as a result of their unlawful and wrongful retention of money conferred by Plaintiff and the Class members, such that Defendant's retention of their money would be inequitable.

9 68. Defendant's unlawful and wrongful acts, as alleged above, enabled
10 Defendant to unlawfully receive monies they would not have otherwise obtained.

11 69. Plaintiff and the Class members have conferred benefits on Defendant,
12 which Defendant have knowingly accepted and retained. Defendant's retention of
13 the benefits conferred by Plaintiff and the Class members would be against
14 fundamental principles of justice, equity, and good conscience.

15 70. Plaintiff and the Class members seek to disgorge Defendant's
16 unlawfully retained profits and other benefits resulting from their unlawful conduct,
17 and seek restitution and rescission for the benefit of Plaintiff and the Class members.

18 71. Plaintiff and the Class members are entitled to the imposition of a
19 constructive trust upon Defendant, such that its unjustly retained profits and other
20 benefits are distributed equitably by the Court to and for the benefit of Plaintiff and
21 the Class members.

**DEMAND FOR JURY TRIAL** 

Plaintiff demands a trial by jury on all claims for which a jury is available.

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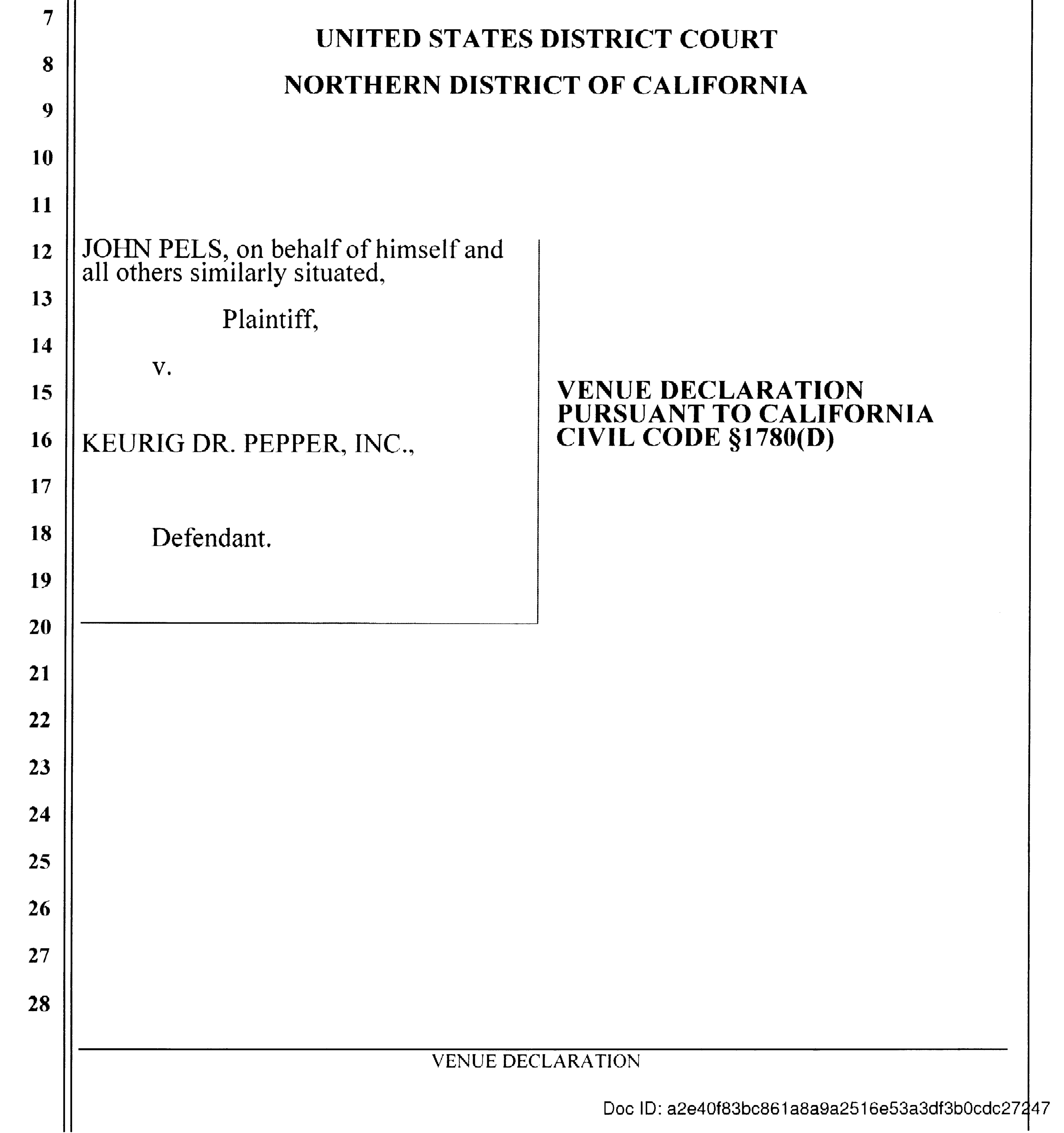
1 **PRAYER FOR RELIEF** 2 WHEREFORE, Plaintiff, on behalf of himself and the general public, 3 demands judgment against Defendant and requests the entry of: 4 An Order declaring that the conduct complained of herein violates the a. CLRA: 5 6 An Order declaring that the conduct complained of herein violates the b. 7 UCL; 8 An Order declaring that the conduct complained of herein violates the c. 9 FAL; 10 d. An Order declaring that Defendant has been unjustly enriched; 11 An Order enjoining Defendant's unlawful and unfair practices; e. 12 An Order requiring Defendant to undertake any further needed f. 13 corrective action, and to continue such action; 14 An Order of restitution for Plaintiff and for the Class. g. 15 An award of attorneys' fees and the reimbursement of all litigation h. 16 costs pursuant to, inter alia, CLRA, Cal. Civ. Proc. Code § 1021.5, and pursuant to 17 the doctrine set forth in Graham v. DaimlerChrysler Corp. 34 Cal.4th 553, 576-77 18 (2004).Such an award is appropriate because: (a) this litigation is aimed at 19 enforcing important rights affecting the public interest; (b) it seeks to confer a 20 significant benefit on the general public or a large class of persons; and (c) the 21 necessity and financial burden of private enforcement is such as to make the award 22 appropriate; and 23 /// 24 25 26 27 28 .20CLASS ACTION COMPLAINT

<ul> <li>i. Such other and further relief as this Court may deem just, equitable, or proper.</li> <li>Dated: June 25, 2019</li> <li>LAW OFFICES OF DAVID N. LAKE</li> <li>By:/s/ David N. Lake</li> <li>By:/s/ David N. Lake</li> <li>Laurence D. Paskowitz</li> <li>THE PASKOWITZ LAW FIRM P.C.</li> <li>208 East 51<sup>st</sup> Street, Suite 380</li> <li>New York, NY 10022</li> <li>212-685-0969</li> <li>Ipaskowitz@pasklaw.com</li> <li>and</li> <li>Roy L. Jacobs</li> <li>ROY JACOBS &amp; ASSOCIATES</li> <li>420 Lexington Avenue, Suite 2440</li> <li>New York, NY 10170</li> <li>212-867-1155</li> <li>rjacobs@jacobsclasslaw.com</li> <li>Attorneys for Plaintiff</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>212-827-1155</li> <li>20</li> <li>212-827-1155</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>212-827-1155</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>212-827-1155</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>212-827</li> <li>21</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>20</li> <li>20</li> <li>21</li> <li>21</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> <li>29</li> <li>29</li> <li>20<!--</th--><th></th><th>Case 3:19-cv-03052-SI Document 11 Filed 06/25/19 Page 21 of 23</th></li></ul>		Case 3:19-cv-03052-SI Document 11 Filed 06/25/19 Page 21 of 23
a $1^{-1}$ 3Dated: June 25, 20195LAW OFFICES OF DAVID N. LAKE7By: $/s/ David N. Lake$ 9David N. Lake9Laurence D. Paskowitz10Laurence D. Paskowitz11208 East 51 <sup>st</sup> Street, Suite 38012New York, NY 10022212-685-0969Ipaskowitz@pasklaw.com14and15ROY JACOBS & ASSOCIATES16ROY JACOBS & ASSOCIATES17420 Lexington Avenue, Suite 244018New York, NY 10170212-867-1156rjacobs@jacobsclasslaw.com21Attorneys for Plaintiff22232324		
4       Dated: June 25, 2019         5       6         7       8         9       By: <u>/s/ David N. Lake</u> 9       David N. Lake         10       Laurence D. Paskowitz         11       208 East 51 <sup>st</sup> Street, Suite 380         12       New York, NY 10022         13       Javid N. Lake         14       and         15       Roy L. Jacobs         16       Roy L. Jacobs         17       A200 Lexington Avenue, Suite 2440         18       New York, NY 10170         19       212-867-1156         19       Tjacobsclasslaw.com         20       Attorneys for Plaintiff         21       21	$\left  \begin{array}{c} 2 \end{array} \right $	proper.
5       6         6       LAW OFFICES OF DAVID N. LAKE         7       8         9       David N. Lake         9       Laurence D. Paskowitz         10       Laurence D. Paskowitz         11       208 East 51 <sup>4</sup> Street, Suite 380         12       New York, NY 10022         212-685-0969       Ipaskowitz@pasklaw.com         14       and         15       Attorneys & ASSOCIATES         16       Roy L. Jacobs         18       New York, NY 10170         212-867-1156       rjacobs@jacobsclasslaw.com         20       Attorneys for Plaintiff         21       22         22       23         23       24         24       25         25       26         26       -21-	3	
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8       By:	6	LAW OFFICES OF DAVID N. LAKE
8       By:	7	
David N. Lake   9   10   11   208 East 51st Street, Suite 380   12   208 East 51st Street, Suite 380   13   14   and   15   16   17   420 Lexington Avenue, Suite 2440   18   212-857-1156   19   riacobs@jacobsclasslaw.com   20   21   23   24   25   26   27   28		By: /s/ David N. Lake
10       Laurence D. Paskowitz         11       208 East 51st Street, Suite 380         12       208 East 51st Street, Suite 380         13       New York, NY 10022         13       Ipaskowitz@pasklaw.com         14       and         15       and         16       Roy L. Jacobs         ROY JACOBS & ASSOCIATES         14       10         15       11         16       Roy L. Jacobs         ROY JACOBS & ASSOCIATES         17       420 Lexington Avenue, Suite 2440         18       New York, NY 10170         212-867-1156       rjacobs@jacobsclasslaw.com         20       Attorneys for Plaintiff         21       23         22       23         23       24         25       26         26       27         27       21-		
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13       Ipaskowitz@pasklaw.com         14       and         15       and         16       Roy L. Jacobs         17       A20 Lexington Avenue, Suite 2440         18       New York, NY 10170         212-867-1156       rjacobs@jacobsclasslaw.com         20       Attorneys for Plaintiff         21       23         22       23         23       24         25       26         27       28	12	New York, NY 10022
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18     New York, NY 10170       19     212-867-1156       19     rjacobs@jacobsclasslaw.com       20     Attorneys for Plaintiff       21     23       23     24       25     26       27     28	17	
10       212-867-1156         19       rjacobs@jacobsclasslaw.com         20       Attorneys for Plaintiff         21       23         23       24         25       26         26       27         28       -21-		
19       rjacobs@jacobsclasslaw.com         20       Attorneys for Plaintiff         21       -21-	18	
Attorneys for Plaintiff  Attorneys for Plaintiff  Attorneys for Plaintiff  -21 -21-	19	
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23 24 25 26 27 28	21	Attorneys for Plaintiff
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-21- CLASS ACTION COMPLAINT	28	
CLASS ACTION COMPLAINT		_21_
		CLASS ACTION COMPLAINT

1	PROOF OF SERVICE	
2	I am employed in the County of Los Angeles, State of California. I am over	
3	the age of 18 and not a party to the within action. My business address is 16130 Ventura Boulevard, Suite 650, Encino, CA 91436. On June 25, 2019, I served the within decument(a) described age AMENDED CLASS ACTION COMPLAINT	
4	within document(s) described as: <b>AMENDED CLASS ACTION COMPLAINT</b> on the interested parties in this action as stated on the attached mailing list:	
5	(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I am readily	
6	familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with	
7	the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party	
8 9	served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.	
10		
11	(BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or	
12	delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed	
13	envelope or package designated by the express service carrier, addressed as set forth on the attached mailing list, with fees for overnight delivery paid or	
14	provided for.	
15	(BY PERSONAL DELIVERY) By providing a true and correct copy of the	
16	foregoing document(s) in a sealed envelope to each of the addressees listed above.	
17		
18	I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.	
19	Executed on June 25, 2019, at Encino, California.	
20	David N. Lake	
21	(Type or print name)	
22		
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26 07		
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1	Mailing List
2	
3	Harold Busch, Esq.
4	Corporate Counsel Keurig Dr Pepper Inc.
5	5301 Legacy Drive Plano, TX 75024
6	(Counsel for Defendant)
7	Jim Baldwin, Esq.
8	General Counsel Keurig Dr Pepper Inc.
9	53 South Avenue
10	Burlington, MA 01803
11	(Counsel for Defendant)
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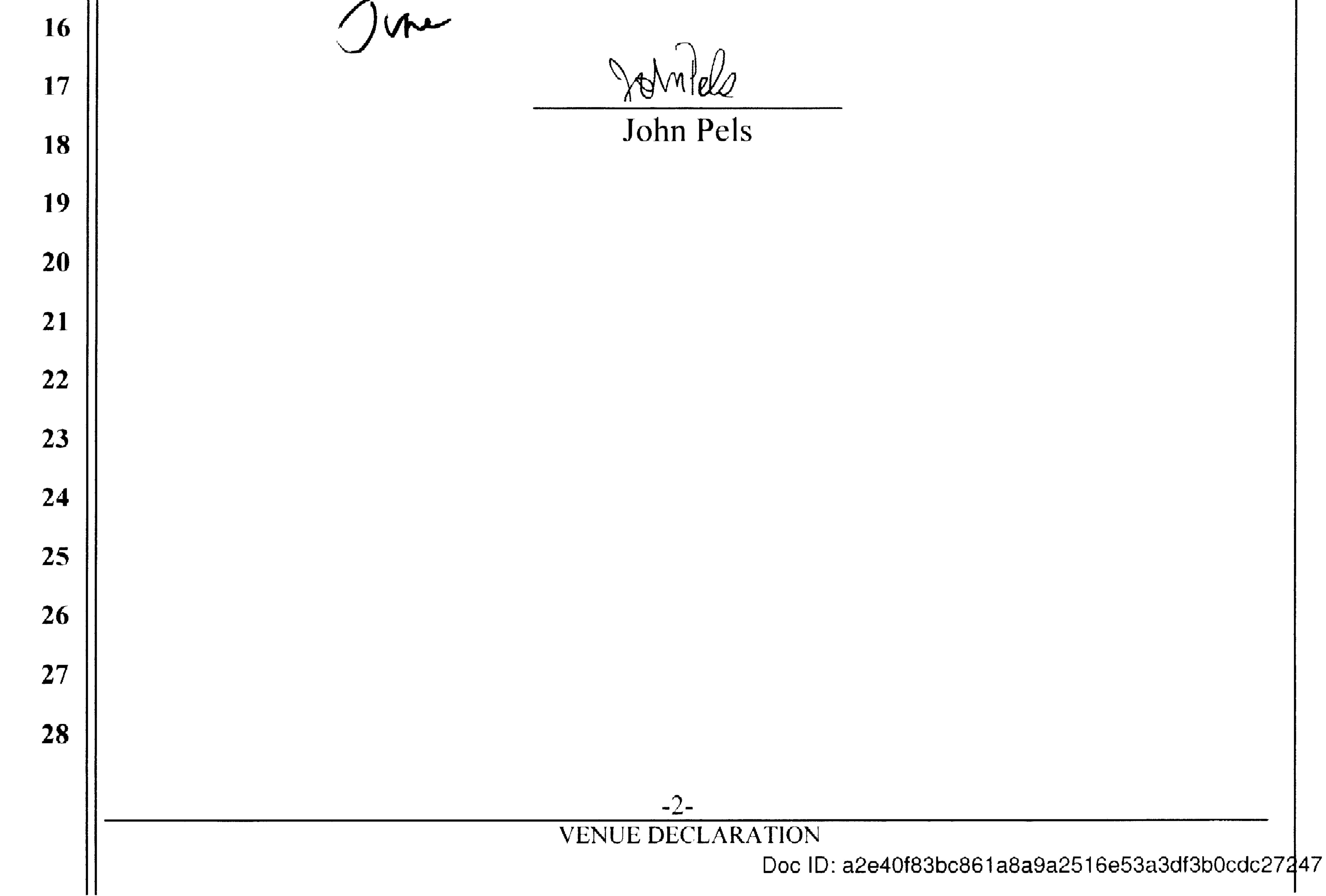




# I, John Pels, declare as follows:

2

- 1. I am over the age of eighteen and am the named plaintiff in this matter.
- 3 || The facts contained in this Declaration are of my own personal knowledge and I
- 4 || could and would competently testify thereto if called upon to do so.
  - 2. I am, and at all relevant times have been, a resident of the County of
- 6 Sonoma within the Northern District of California.
- 3. Within the period alleged in the Complaint, I purchased the beverage at
  issue in this suit in Sonoma County. The corporate Defendant may be deemed to do
  business in the Northern District of California and in the county in which the Court
  is situated.
  4. Accordingly, this action has been properly venued under Section
  1780(d), and no forum shopping has occurred.
  I declare under penalty of perjury under the laws of the United States of
  America that the foregoing is true and correct.
  Executed on Jame 2, 2019, at Windsor, California.



1	PROOF OF SERVICE
2	I am employed in the County of Los Angeles, State of California. I am over
3	the age of 18 and not a party to the within action. My business address is 16130 Ventura Boulevard, Suite 650, Encino, CA 91436. On June 25, 2019, I served the within document(s) described as: <b>VENUE DECLARATION PURSUANT TO</b>
4	<b>CALIFORNIA CIVIL CODE §1780(D)</b> on the interested parties in this action as stated on the attached mailing list:
5	(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed
6	envelope addressed as set forth on the attached mailing list. I am readily familiar with this firm's practice for collection and processing of
7	correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in
8	the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter
9	date is more than one day after date of deposit for mailing contained in affidavit.
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11	(BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express an express service carrier or
12	(BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed
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14	provided for.
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16	(BY PERSONAL DELIVERY) By providing a true and correct copy of the foregoing document(s) in a sealed envelope to each of the addressees listed above.
17	
18 19	I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.
20	Executed on June 25, 2019, at Encino, California.
20 21	
21	David N. Lake     Signature       (Type or print name)     Signature)
22	
23 24	
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7	Jim Baldwin, Esq.
8	General Counsel Keurig Dr Pepper Inc.
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