

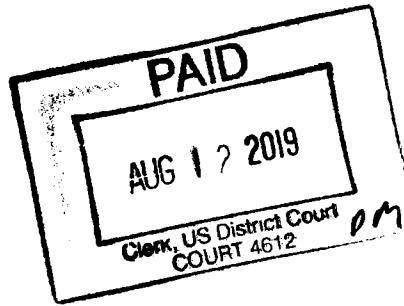
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CLERK, US DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID GREENSTEIN

Plaintiff,

vs.

THE COCA-COLA COMPANY, A
CORPORATION.

Defendants

Case

CV19-6989-AB (KSx)

COMPLAINT FOR FRAUD, BREACH
OF CONTRACT, RESTITUTION
AND INJUNCTION.

Date: 8-8-2019

David Greenstein

1 **PRELIMINARY STATEMENT**

2 1. Plaintiff brings this consumer protection and false advertising
3 lawsuit against Defendant, based on Defendant's misleading business practices
4 with respect to the packaging and sale of its Gold Peak Tea, 18.5 Fl oz.
5 (hereinafter "product). Note pictures of the actual bottle attached hereto.
6

7 2. At all relevant times, Defendant has packaged, transported,
8 designed and sold the Product in a clear plastic bottle (hereinafter "bottle").

9 3. The bottle was made and formed in such a way as to be misleading
10 and deceptive, in the following particular(s).

11 i. The bottom of the bottle is concaved, which concaved area
12 impinges 6.39% into the space that would otherwise hold the liquid tea.

13 ii. This concaved area can not be seen by the purchaser prior to
14 purchase.

15 iii. This concaved area serves no benefit to the product or the
16 consumer, its sole purpose is to make it appear that the bottle has more tea in it
17 than it actually does.

18 4. At the time of purchase, Plaintiff, as a reasonable consumer and as
19 such, didn't expect the concaved bottom and believed he would be getting more tea
20 than he actually received. Plaintiff had never purchased this product before.

21 5. Plaintiff relied on Defendant's deceptive forming of the bottle in
22 purchasing the bottle, believing that the bottle would have more tea in it than it
23 actually contained. Had Plaintiff known that the bottle was deceptively made and
24 formed, he would not have purchased it or would have paid significantly less for
25 the Product.

26 6. Because plaintiff could not see the large concaved area, he could
27 not comparison shop for a better deal.
28

1 7. At all times herein, defendants knew that the regulatory agencies,
2 both state and federal, that enforce laws regarding false, misleading and deceptive
3 packaging are underfunded, understaffed and overworked. Defendants elected to
4 “play the odds” that they would not be caught filling the package with excessive
5 slack fill as they did in this instance. Plaintiff suffered injury in fact as a result of
6 Defendant’s deceptive practices.

7 **JURISDICTION AND VENUE**

8 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
9 1332(d) (2) (A) because this case is between citizens of different states, and the
10 amount in dispute is in excess of \$75,000, exclusive of interests and costs. This
11 figure does include costs of compliance with any injunctive order(s) this court may
12 make as requested.

13 9. This Court has personal jurisdiction over Defendant because
14 Defendant has sufficient minimum contacts in California or otherwise intentionally
15 did avail itself of the markets within California, through its sale of the Product to
16 California consumers and is registered with the California secretary of state to do
17 business in California.

18 10. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(1)
19 because Defendant regularly conducts business throughout this District, and a
20 substantial part of the events and/or omissions giving rise to this action occurred in
21 this District.

22 **PARTIES**

23 11. Plaintiff David Greenstein is a citizen of California, residing
24 within this District.

25 11(a) Defendant Coca Cola Company is a Delaware corporation.

1 12. In December, 2017, plaintiff purchased the product at Dollar Tree,
2 4747 W Century Blvd, Inglewood, CA 90304 and paid approximately \$1.00 plus
3 California sales tax for the product.

4 13. Plaintiff would not have purchased the Product or would have paid
5 significantly less for the Product had he known that the bottle contained less tea
6 then he expected when he viewed the bottle. Plaintiff therefore suffered injury in
7 fact and lost money as a result of Defendant's misleading, false, unfair, and
8 fraudulent practices, as described herein.

9 14. Defendant Coca Cola Company, with its principle executive
10 offices located in Atlanta, Georgia, directly or through its agents, parent company,
11 related entities, and/or subsidiaries, produces, manufactures, bottles, labels,
12 distributes, markets, advertises and sells the Product nationwide, including in
13 California through various retail distributors.

14
15 **FACTUAL ALLEGATIONS**

16 15. At all relevant times, Defendant has manufactured, packaged,
17 labeled, distributed, marketed, advertised, and sold the Product across California
18 and in several states of the United States

19 **THE BOTTLE IS MISBRANDED UNDER**
20 **BOTH CALIFORNIA AND FEDERAL LAW**

21 16. 21 C.F.R. § 100.100 provides, *In accordance with section 403(d)*
22 *of the act, a food shall be deemed to be misbranded if its container is so made,*
23 *formed, or filled as to be misleading.*

24 17. California Health and Safety Code, Division 104, Part 5, (The
25 Sherman Law) provides in relevant part:

26 i. §110375. (a) No container wherein commodities are packed
27 shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so
28

1 constructed or filled, wholly or partially, as to facilitate the perpetration of
2 deception or fraud.

3 ii. § 110375. (b) No container shall be made, formed, or filled as
4 to be misleading.

5 iii. § 110690. Any food is misbranded if its container is so
6 made, formed, or filled as to be misleading.

7 iv. § 110760. It is unlawful for any person to manufacture, sell,
8 deliver, hold, or offer for sale any food that is misbranded.

9 v. § 110765. It is unlawful for any person to misbrand any food.

10 vi. § 110770. It is unlawful for any person to receive in
11 commerce any food that is misbranded or to deliver or proffer for delivery any
12 such food.

13 vii. § 111825.

14
15 (a) Any person who violates any provision of this part or any regulation adopted
16 pursuant to this part shall, if convicted, be subject to imprisonment for not
17 more than one year in the county jail or a fine of not more than one thousand
18 dollars (\$1,000), or both the imprisonment and fine.

19 23 Defendant's Product fit squarely within the foregoing since it is
20 made, formed and filled to be deceptive as specified herein.

21 25. The Product' container is "made, formed and filled to be deceptive
22 because of the concaved bottom.

23 18. Furthermore, the concaved bottom is non-functional as it does not
24 fit into any of the safe-harbor provisions promulgated by the FDA:

25 (1) Pursuant to 21 C.F.R § 100.100(a) (1), the concaved bottom does
26 not protect the contents inside.

1 Pursuant to 21 C.F.R § 100.100(a) (2), no packaging or machine enclosure
2 requirements would require that the Product be packaged in a bottle with a
3 concaved bottom.

4 Pursuant to 21 C.F.R § 100.100(a) (3), the concaved bottom is strictly
5 a design of defendant.

6 Pursuant to 21 C.F.R § 100.100(a) (4), the Product' the concaved
7 bottom does not "perform a specific function."

8 Pursuant to 21 C.F.R § 100.100(a) (5), the tea are not packaged in a
9 bottle with a concaved bottom that is meant to be reused or otherwise used after
10 consumption of the tea.

11 Pursuant to 21 C.F.R § 100.100(a) (6), Defendant does have the
12 ability to change the design of the bottle to eliminate the concaved bottom.

13 **THE PRODUCT' PACKAGING IS**
14 **MISLEADING TO CONSUMERS**
15

16 19. Defendant's Product' packaging is misleading to plaintiff and
17 other reasonable consumers.

18 20. Defendant knows, knew or should have known how the Product
19 bottle is is made, formed and, because it and its agents manufacture, make, form
20 and fill the bottles. Furthermore, the Product packaging governed by federal
21 regulations that control the packaging of the Product, and therefore Defendant is,
22 was aware, or should have been aware that its Product are not in compliance with
23 regulations.

24 21. Additionally, Defendant knows, knew or should have known that
25 Plaintiff and other consumers did and would rely on the size and style of the bottle
26 in their decision of the Product, and would reasonably believe that the
27 bottle had more tea in it,
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1 22. According to Congress, “[c]onsumers develop expectations as to
2 the amount of product they are purchasing based, at least in part, on the *size*
3 *of the container.*” Misleading Containers; moreover, because “[p]ackages have
4 replaced the salesman,” “packaging becomes the ‘final salesman’ between the
5 manufacturer and the consumer, communicating information about the quantity
6 and quality of product in a container.”

7 23. Furthermore, Plaintiff believes according to a peer reviewed
8 journal article, an average consumer spends approximately 13 seconds purchasing
9 a product in-store and approximately 19 seconds purchasing a product online.

10 24. Plaintiff also believes according to peer reviewed journal article
11 analyzing the effects container size and shape on consumer perception, “[p]ackages
12 that appear larger will be more likely to be purchased.”

13 25. In reasonable reliance on the size and style of the packaging, and
14 believing that the Product would contain a larger amount of tea, Plaintiff
15 purchased the Product.

16 26. Plaintiff did not know, and had no reason to know, that the
17 Product actually contained a significantly less tea, because a view of the container
18 did not expose the concaved bottom. Plaintiff, as a reasonable consumer, could not
19 accurately determine the amount of tea in the bottle, prior to purchasing it.

20 5 C.J. Gobb & W.D. Hoyer, *Direct observation of search behavior in*
21 *the purchase of two nondurable product*, Psychology & Marketing 2: 161–179
22 (1985).

23 6 Priya Raghubir & Aradhna Krishna, *Vital Dimensions in Volume*
24 *Perception: Can the Eye Fool the Stomach?*, 36 Journal of Marketing Research,
25 No. 3, 313-326 (1999).

1 7 Peter R Dickson & Alan G. Sawyer, *Point of Purchase Behavior*
2 *and Price Perceptions of Supermarket Shoppers*, Marketing Science Institute
3 Report No. 86-102. Cambridge, MA: Marketing Science Institute (1986).

4 8 Omprakesh K. Gupta et al., *Package downsizing: is it ethical?* 21 *AI*
5 *& Society*, No. 3, 239-250 (2007).

6 27. Research indicates that 90% of consumers make a purchase after
7 only visually viewing the packaging but without physically having the product in
8 their hands.

9 28. Because the package does not contain the amount of tea
10 reasonably expected by Plaintiff and consumers, Defendant's uniform practice of
11 deceptively making, forming and filling the bottle in the foregoing manner was and
12 continues to be misleading and deceptive, and cheats consumers.

13 29. Should plaintiff go to purchase the product again, which he
14 intends to do, he will be exposed to the same or substantially similar deceptive
15 practice as to the Product, (1) contain the same misleading style of packaging.

16 30. Plaintiff and other consumers have paid money for the Product.
17 More specifically, they paid for tea they expected but never received.

18 31. Plaintiff and other consumers would have paid significantly less
19 for the Product had they known that the that the bottle was deceptively made,
20 formed and filled so as to make plaintiff believe he was getting more tea than he
21 actually was. In the alternative, Plaintiff and other consumers would not have
22 purchased the Product at all had they known that the Product had less tea in it than
23 they believed. Therefore, Plaintiff and other consumers purchasing the Product
24 suffered injury in fact and lost money as a result of
25 Defendant's false, unfair, and fraudulent practices, as described herein.
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32. As a result of its misleading business practice, and the harm caused to Plaintiff and other consumers, Defendant should be enjoined from making forming and filling the bottles deceptively as alleged herein. Furthermore, Defendant should be required to pay for all damages caused to Plaintiff.

33. Despite being misled by Defendant, Plaintiff would likely purchase the Product in the future if the package was filled with tea as indicated by the view of the bottle. 9 Jesper Clement, *Visual influence on in-store buying decisions: an eye-track experiment on the visual influence of packaging design*, 23 *Journal of Marketing Management*, 917–928 (2007).

FIRST CLAIM FOR RELIEF

Violation of California’s Unfair Competition Law (“UCL”),
California Business & Professions Code §§ 17200, *et seq.*

34. Plaintiff repeats the allegations contained in all the paragraphs above as if fully set forth herein.

35. Plaintiff brings this claim individually but with the desire to benefit California Consumer against Defendants’ improper conduct.

36. UCL §17200 provides, in pertinent part, that “unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising”

37. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law.

38. Defendant’s false and misleading advertising of the Product therefore was and continues to be “unlawful” because it violates 21 C.F.R. § 100.100 and 21 U.S.C. § 343(d), because The bottle is made, formed and filled so as to deceive consumers.

39. As a result of Defendant’s unlawful business acts and practices,

1 Defendant has unlawfully, unfairly and/or fraudulently obtained money from
2 Plaintiff, and other California consumers.

3 40. Under the UCL, a business act or practice is “unfair” if the
4 Defendant’s conduct is substantially injurious to consumers, offends public policy,
5 and is immoral, unethical, oppressive, and unscrupulous, as the benefits for
6 committing such acts or practices are outweighed by the gravity of the harm to the
7 alleged victims.

8 41. Defendant’s wrongful conduct was and continues to be of no
9 benefit to purchasers of the Product, as it is misleading, unfair, unlawful, and is
10 injurious to consumers who rely on what they see when buying a bottled product,
11 and reasonably assume the bottle to be full from that they see, which is not the case
12 with the bottle referenced in this complaint. . The making, forming and filling of
13 the bottle as alleged, causes consumer confusion as to the actual quantity of
14 product in the bottle. Therefore, Defendant’s conduct was and continues to be
15 “unfair.”
16

17 42. As a result of Defendant’s unfair business acts and practices,
18 Defendant has and continues to unfairly obtain money from Plaintiff, and other
19 California consumers.

20 43. Under the UCL, a business act or practice is “fraudulent” if it
21 actually deceives or is likely to deceive members of the consuming public.

22 44. A violation of an FTC rule or a state or federal statute meant to
23 protect the public may be a per se a violation • A merchant’s good faith does not
24 excuse technical noncompliance • A seller’s lack of awareness of a regulation is no
25 defense • To show deception under the FTC Act, intent, knowledge of wrongdoing,
26 actual reliance or damage, and even actual deception are unnecessary. All that is
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1 required is proof that a practice has a tendency or capacity to deceive even a
2 significant minority of consumers

3 45. Defendant's conduct here was and continues to be fraudulent
4 because it has the effect of deceiving all consumers into believing that the bottle
5 contains a greater amount of tea when it does not.

6 **Defendant's conduct was "fraudulent."**

7 46. As a result of Defendant's fraudulent business acts and practices,
8 Defendant has and continues to fraudulently obtain money from Plaintiff, and other
9 California consumers.

10 47. Plaintiff requests that this Court cause Defendant to restore this
11 unlawfully, unfairly, and fraudulently obtained money to Plaintiff, and to enjoin
12 Defendant from violating the UCL or violating it in the same fashion in the future
13 as discussed herein. Otherwise may be irreparably harmed and/or denied an
14 effective and complete remedy if such an order is not granted.

15 **SECOND CLAIM FOR RELIEF**

16 **Violation of California's False Advertising Law ("FAL"),**

17 **California Business & Professions Code §§ 17500, *et seq***

18 48. Plaintiff repeats the allegations contained in the paragraphs
19 above as if fully set forth herein.

20 49. Plaintiff brings this claim individually and in the hope of
21 benefiting all California consumers against Defendant.

22 50. California's FAL makes it "unlawful for any person to make or
23 disseminate or cause to be made or disseminated before the public . . . in any
24 advertising device . . . or in any other manner or means whatever, including over
25 the Internet, any statement, concerning . . . personal property or services
26 professional or otherwise, or performance or disposition thereof, which is untrue or
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1 misleading and which is known, or which by the exercise of reasonable care should
2 be known, to be untrue or misleading.”

3 51. Defendant has represented and continues to represent to the
4 public, including Plaintiff, through their deceptive packaging, that the bottle of tea
5 contained more tea than it actually did. Because Defendant has disseminated
6 misleading information regarding their Product, and Defendant knows, knew, or
7 should have known through the exercise of reasonable care that the representation
8 was and continues to be misleading, Defendant violates the FAL.

9 52. Defendant knows, knew or should have known through the
10 exercise of reasonable care that such representation was and continues to be
11 unauthorized and misleading.

12 53. As a result of Defendant’s false advertising, Defendant has and
13 continues to fraudulently obtain money from Plaintiff and other California
14 consumers.

15 54. Plaintiff request that this Court cause Defendant to restore this
16 money to him, and to enjoin Defendant from violating the FAL or violating it in
17 the same fashion in the future as discussed herein. Otherwise, Plaintiff and
18 California Consumer may be irreparably harmed and/or denied an effective and
19 complete remedy if such an order is not granted.

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21 **THIRD CLAIM FOR RELIEF**

22 **Breach of Implied Warranty**

23 **California Commercial Code § 2314**

24 55. Plaintiff repeats the allegations contained in the foregoing
25 paragraphs above as if fully set forth herein.

26 56. Plaintiff brings this claim individually and with the intent to
27 benefit all California consumers against Defendant.

1 57. California Commercial Code § 2314(1) provides that “a warranty
2 that the goods shall be merchantable is implied in a contract for their sale if the
3 seller is a merchant with respect to goods of that kind.” Cal. Com. Code § 2314(1).

4 58. California Commercial Code § 2314(2) provides that “[g]oods to
5 be merchantable must be at least such as... (e)[a]re adequately contained,
6 packaged, and labeled as the agreement may require.” Cal. Com. Code §
7 2314(2)(e).

8 59. Defendant is a merchant with respect to the sale of food and
9 confectionary product, including the Product here. Therefore, a warranty of
10 merchantability is implied in every contract for sale of the Product to California
11 consumers.

12 60. By making, forming and filling the bottle of tea as it currently
13 does, Defendant has deceived Plaintiff and other consumers who purchased the
14 product.

15 61. Defendant made an implied promise that the bottle would
16 accurately reflect the amount of tea in it.

17 By the use of the concaved bottom of the bottle, Defendant has not
18 “adequately...packaged” the Product as promised. Plaintiff and thus he did not
19 receive the goods as impliedly warranted by Defendant to be merchantable. This is
20 especially true in view of the fact that the bottle, as currently made, formed and
21 filled, is illegal to sell or possess.

22 62. Therefore, the Product are not merchantable under California law,
23 and Defendants have breached their implied warranty of merchantability in regard
24 to the Product.
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1 63. If Plaintiff had known that the Product were not legally packaged,
2 he would not have purchased the Product, or if uncertain, would have purchased
3 less of the product, or would not have been willing to pay the price associated with
4 Product.

5 64. Therefore, as a direct and/or indirect result of Defendant's breach,
6 Plaintiff has suffered injury and deserve to recover all damages afforded under the
7 law.

8 **FOURTH CLAIM FOR RELIEF**

9 **COMMON LAW FRAUD**

10 65. Plaintiff repeats the allegations contained in the paragraphs above
11 as if fully set forth herein.

12 66. Plaintiff brings this claim individually and with the hopes of
13 getting benefits for all California consumers.

14 67. Defendant has willfully, falsely, and knowingly filled and
15 packaged the Product in a manner indicating that the bottle had more tea in it than
16 it actually did. Therefore Defendant has made misrepresentations as to the
17 Product.

18 68. Defendant's misrepresentations are and were material (i.e., the
19 type of misrepresentations to which a reasonable person would attach importance
20 and would be induced to act thereon in making purchase decisions), because they
21 relate to the quantity of Product the consumer is receiving.

22 69. Defendant knew or recklessly disregarded the fact that the Product
23 contained a significant amount of non-functional slack-fill.

24 70. Defendants intended and intends that Plaintiff and others
25 consumers rely on these representations, as evidenced by Defendant intentionally
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1 manufacturing and packaging the product in a package that is significantly larger
2 than the volume of the contents inside.

3 71. Plaintiff reasonably and justifiably relied on Defendant's
4 misrepresentations when purchasing the Product and had the correct facts been
5 known, would not have purchased the Product or would not have purchased them
6 at the prices at which they were offered.

7 72. To perpetrate the fraud, defendants did the following.

8 a. Defendants named herein as Does, conspired with the officers and
9 upper level personal with an ownership interest in the company, to package the tea
10 in such a way that the consumer could not know the true amount of volume in the
11 package.

12 b. In furtherance of this conspiracy, said defendants made and
13 approved a package style for the tea that did not allow the consumer to know the
14 true amount of tea in the bottle due to how the bottle was made and formed.

15 c. These actions were taken since shortly after the product was
16 introduced to the market.

17 d. In addition to designing a deceptive package as shown above,
18 defendants caused the packages to be placed on shelves in retail stores so
19 consumers could see the bottle and believe they contained more tea than they
20 actually did.

21 e. Defendants withheld information from retailers as to the disparity
22 between the amount tea actually in the bottle and what was the true amount, which
23 was less than anticipated, due to the concaved bottom, so that the retailers would
24 not question if the packaging was legal.

25 73. Therefore, as a direct and proximate result of Defendant's fraud,
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1 Plaintiff suffered economic loss and other general and specific damages, including
2 but not limited to the amounts paid for the Product, and any interest that would
3 have accrued on those monies, all in an amount to be proven at trial.

4 **FIFTH CLAIM FOR RELIEF**

5 **Intentional Misrepresentation**

6 74. Plaintiff repeats the allegations contained in all paragraphs above
7 as if fully set forth herein.

8 75. Plaintiff brings this claim individually, and for the benefit of
9 California consumers.

10 76. Defendant has filled and packaged the Product in a manner
11 indicating that the bottle was “full.” However, the bottle contain approximately
12 less than plaintiff and other consumers would anticipate. Therefore Defendant has
13 made misrepresentations as to the Product.

14 77. Defendant’s misrepresentations regarding the Product are material
15 to a reasonable consumer because they relate to the quantity of product received by
16 consumers. A reasonable consumer would attach importance to such
17 representations and would be induced to act thereon in making purchase decisions.

18 78. At all relevant times when such misrepresentations were made,
19 Defendant knew that the representations were misleading, or has acted recklessly
20 in making the representations, without regard to the truth.

21 79. Defendant intended and intends that Plaintiff and others California
22 consumers rely on the size and style of the Product’ packaging, as evidenced by
23 Defendant’s intentionally manufacturing, marketing, and selling packaging that is
24 significantly larger than the volume of the contents inside.

25 80. Plaintiff justifiably relied on Defendant’s intentional
26 misrepresentations when purchasing the Product, and had the correct facts been
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1 known, would not have purchased the Product or would not have purchased them
2 at the prices at which it was offered.

3 81. Therefore, as a direct and proximate result of Defendant's
4 intentional misrepresentations, Plaintiff suffered economic loss and other general
5 and specific damages, including but not limited to the amounts paid for the
6 Product, and any interest that would have accrued on those monies, all in an
7 amount to be proven at trial.

8 **SIXTH CLAIM FOR RELIEF**

9 **Negligent Misrepresentation**

10 82. Plaintiff repeats the allegations contained in all paragraph above
11 as if fully set forth herein.

12 83. Plaintiff brings this claim individually and hoping to benefit
13 California consumers.

14 84. Defendant has made, formed and filled the bottle in a manner
15 indicating that the bottle had more tea than it actually did.

16 85. Defendant's misrepresentations regarding the Product are material
17 to a reasonable consumer because they relate to the quantity of product received by
18 the consumer.

19 986. (a) The reasonable consumer would attach importance to such
20 representations and would be induced to act thereon in making purchase decisions.

21 87. At all relevant times when such misrepresentations were made,
22 Defendant knew or was negligent in not knowing that that the bottle did not
23 contain the amount of tea anticipated, due to how it was made and formed.
24 misrepresentation is not false and misleading.

25 88. Defendant intended and intends that Plaintiff and others
26 consumers rely on the size and style of the Product' packaging, as evidenced by
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1 Defendant's packaging that is significantly larger than the volume of the contents
2 inside.

3 89. Plaintiff has have reasonably and justifiably relied on Defendant's
4 negligent misrepresentations when purchasing the Product, and had the correct
5 facts been known, would not have purchased the Product or would not have
6 purchased it at the prices at which they it was offered.

7 90. As a direct and proximate result of Defendant's negligent
8 misrepresentations, Plaintiff has suffered economic loss and other general and
9 specific damages, including but not limited to the amounts paid for the Product,
10 and any interest that would have accrued on those monies, all in an amount to be
11 proven at trial.

12 **SEVENTH CLAIM FOR RELIEF**

13 **Breach of Contract**

14 91. Plaintiff repeats the allegations contained in the paragraphs above
15 as if fully set forth herein.

16 92. Plaintiff brings this claim individually and in the hopes of
17 benefitting all California consumers.

18 93. In purchasing the Product, Plaintiff had formed valid contracts that
19 are supported by sufficient consideration, pursuant to which Defendant is obligated
20 to provide the Product that in a package that is substantially filled, and not
21 deceptively represented by Defendant's packaging.

22 94. Defendant has materially breached its contracts with Plaintiff by
23 selling a Product that are not in a package in a legal manner.

24 95. As a direct and proximate result of Defendant's breaches,
25 Plaintiff was damaged in that he received a product with less value than the
26 amounts paid. Moreover, Plaintiff has have suffered economic losses and other
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1 general and specific damages, including but not limited to the amounts paid for the
2 Product, and any interest that would have accrued on those monies, all in an
3 amount to be proven at trial.

4 **EIGHTH CLAIM FOR RELIEF**

5 **Quasi Contract/Unjust Enrichment/Restitution**

6 96. Plaintiff repeats the allegations contained in all the paragraphs
7 above as if fully set forth herein.

8 97. Plaintiff brings this claim individually and in the hopes of
9 benefiting all California consumers.

10 98. As alleged herein, Defendant has intentionally and recklessly
11 made misleading representations to Plaintiff induce him to purchase the Product.

12 105. Plaintiff reasonably relied on the misleading representations and have not
13 received all of the benefits promised by Defendant. Plaintiff was induced by
14 Defendant's misleading and false representations about the Product, and paid for
15 it when he would and/or should not have or paid more money to Defendant for
16 the Product than he otherwise would and/or should have paid. Plaintiff has
17 conferred a benefit upon Defendant as Defendants have retained monies paid to
18 them by Plaintiff.

19 99. The monies received were obtained under circumstances that were
20 at the expense of Plaintiff and Plaintiff did not receive the full value of the benefit
21 conferred upon Defendant.

22 100. Therefore, it is inequitable and unjust for Defendant to retain the
23 profit, benefit, or compensation conferred upon them without paying Plaintiff for
24 the difference of the full value of the benefits compared to the value actually
25 received.
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1 101. As a direct and proximate result of Defendant's unjust
2 enrichment, Plaintiff is entitled to restitution.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually seeks judgment against
5 Defendants, as follows:

6 a) For an order declaring that Defendant's conduct violates the
7 statutes and laws referenced herein;

8 b) For an order finding in favor of Plaintiff, on all counts asserted
9 herein;

10 c) For injunctive relief directing that, in view of the unlawful criminal
11 conduct of Defendants, Defendant immediately cease and desist making,
12 marketing, advertising, transporting or selling the product in California until such
13 time as it is in compliance with both California and federal slack fill laws.

14 d) For punitive and/or exemplary damages as allowed;

15 f) For all costs of suit, and

16 e) Such other relief as this court deem just and proper

17 **DEMAND FOR TRIAL BY JURY**

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

19 :

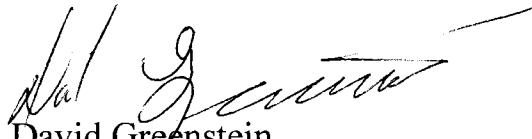
20 .

21 DAVID GREENSTEIN

22 **STATEMENT REGARDING FRCP RULE 11**

23 I David Greenstein, prepared this complaint and know the contents
24 thereof.

1 I am familiar with FRCP Rule 11 and declare that as to the allegations
2 in this complaint, I either know them as a fact to be true or believe them to be true
3 based on my research, information and belief.
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6 David Greenstein
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JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAVID GREENSTEIN

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Pro Se Plaintiff

DEFENDANTS

THE COCA COLA COMPANY, A CORPORATION

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

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

Attorneys (If Known)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:

Violation of Consumer Protection laws, false, misleading & deceptive packaging & advertising

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
1.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

CV19-6989

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th align="center" colspan="2">STATE CASE WAS PENDING IN THE COUNTY OF:</th> </tr> <tr> <td><input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo</td> <td align="center">Western</td> </tr> <tr> <td><input type="checkbox"/> Orange</td> <td align="center">Southern</td> </tr> <tr> <td><input type="checkbox"/> Riverside or San Bernardino</td> <td align="center">Eastern</td> </tr> </table>	STATE CASE WAS PENDING IN THE COUNTY OF:		<input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western	<input type="checkbox"/> Orange	Southern	<input type="checkbox"/> Riverside or San Bernardino	Eastern	
STATE CASE WAS PENDING IN THE COUNTY OF:										
<input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western									
<input type="checkbox"/> Orange	Southern									
<input type="checkbox"/> Riverside or San Bernardino	Eastern									
QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.								
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.								
QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.								
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.								
QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County							
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>		<input checked="" type="checkbox"/>							
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓									
QUESTION E: Initial Division? Enter the initial division determined by Question A, B, C, or D above: →	INITIAL DIVISION IN CACD									
QUESTION F: Northern Counties? Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No										

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):**

DATE: 8-12-19

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))