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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HAROLD BROWER, individually, and
on behalf of all others similarly situated,

Plaintiff,

V.

THE KRAFT HEINZ COMPANY.

Defendant

CASE NO.: '20CV1540 JM WVG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Harold Brower (“Plaintiff”), on behalf of himself and all others
 2 similarly situated, brings this class action against Defendant The Kraft Heinz
 3 Company (“Defendant”), based on Defendant’s false and deceptive advertising and
 4 labeling of their Maxwell House ground coffee products. Plaintiff makes the
 5 following allegations based on the investigation of his counsel and on information
 6 and belief, except as to allegations pertaining to Plaintiff individually, which are
 7 based on his personal knowledge.

8 **INTRODUCTION**

9 1. This case revolves around a straightforward and systemic course of
 10 false, misleading, and unlawful conduct: Defendant has grossly exaggerated the
 11 number of cups of coffee that certain varieties of Maxwell House ground coffee
 12 products (the “Products”)¹ can make in order to induce consumer purchases and to
 13 charge consumers more for these products.

14 2. Throughout the statute of limitations period, Defendant has sold the
 15 Products to consumers based on the representation that they contain enough ground
 16 coffee to make up to a specific number of servings (e.g., “**240 6 FL OZ CUPS**”).
 17 However, by following Defendant’s own definitions and instructions, the Products
 18 do not contain nearly enough ground coffee to make the number of servings
 19 represented.

20 3. Indeed, it is a classic and unlawful bait-and-switch scheme that causes
 21 unsuspecting consumers to spend more money for less than the advertised amount of
 22 coffee they believe they are purchasing.

23 4. Plaintiff and other consumers purchased the Products because they
 24 reasonably believed – based on Defendant’s representations – that these products
 25 contained enough coffee to make the specified number of servings. Had Plaintiff
 26 and other consumers known the truth (i.e., that the Products do not contain enough

27 28¹ “Products” are further defined and listed in Paragraphs 12 and 28.

coffee to make the specified number of servings), they would have paid less for them, or would not have purchased them at all. As a result, Plaintiff and other consumers have been deceived and have suffered economic injury.

4 5. Plaintiff seeks relief in this action individually, and on behalf of all
5 other similarly situated individuals who purchased Defendant's falsely and
6 deceptively labeled Products during the statute of limitations period, for violations
7 of California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*,
8 California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*,
9 California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, and
10 for breach of express and implied warranty, intentional and negligent
11 misrepresentation, unjust enrichment, and for violation of the Magnuson-Moss
12 Warranty Act, 15 U.S.C. § 2301, *et seq.*

JURISDICTION AND VENUE

14 6. This Court has subject matter jurisdiction pursuant to the Class Action
15 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed
16 under Rule 23 of the Federal Rules of Civil Procedure, there are thousands of
17 proposed Class members, the aggregate amount in controversy exceeds \$5,000,000
18 exclusive of interest and costs, and Defendant is a citizen of a state different from at
19 least some members of the proposed Classes, including Plaintiff.

20 7. This Court has personal jurisdiction over Defendant because Defendant
21 has sufficient minimum contacts in California, or otherwise intentionally avails
22 itself of the markets within California, as Defendant sells the Products in California
23 to California consumers.

24 8. Venue is proper in this judicial District pursuant to 28 U.S.C. §
25 1391(b)(2) because a substantial part of the events or omissions giving rise to the
26 claim occurred in this District. Plaintiff purchased the Products in this District.

THE PARTIES

9. Plaintiff Harold Brower is a citizen of the United States and the State of
10 California and he currently resides in San Diego County. In early 2020, Plaintiff
11 purchased the Maxwell House Dark Roast, 28 oz product and the Maxwell House
12 Original Roast, 28 oz product from a Vons and a Costco in San Diego, California,
13 for his own personal benefit. In purchasing the Products, Plaintiff saw and relied on
14 Defendant's representations made on the packaging. Specifically, Plaintiff
15 reasonably believed that the Products contained enough ground coffee to make 240
16 cups or servings of coffee because he saw the representation "**MAKES UP TO 240 6**
17 **FL OZ CUPS**" prominently printed on the front of each canister. Plaintiff's
18 reasonable belief that the Products he purchased could make the represented number
19 of servings was an important factor in his decision to purchase the Products.
20 Plaintiff would have paid significantly less for the Products had he known that the
Products did not contain enough ground coffee to make the represented number of
cups of coffee. Therefore, Plaintiff suffered injury in fact and lost money as a result
of Defendant's misleading, false, unfair, and deceptive practices, as described
herein. Plaintiff was also damaged in his purchase because Defendant's false
advertisement artificially inflated the price of the Product as a result of increased
consumer demand generated by the false advertisement, which naturally led to an
increase in the price charged.

10. Despite being misled by Defendant with respect to the Products he
purchased, Plaintiff lacks personal knowledge as to Defendant's specific business
practices relating to the Products. Consequently, there is still doubt in his mind as to
the possibility that some of the Products could contain enough coffee to make the
advertised number of servings. Additionally, because there are numerous Products
involved in Defendant's deceit, and due to the likelihood that Defendant may yet
develop and market additional coffee products that misrepresent the serving yield,
Plaintiff may again purchase a falsely-advertised product from Defendant under the

1 mistaken impression that the represented number of servings is accurate. Therefore,
2 Plaintiff cannot rely on the accuracy of the Products' labeling with confidence and
3 has no way of knowing whether the Products' label remains inaccurate. Indeed,
4 Plaintiff regularly shops at stores where the Products are sold, and he would like to
5 continue purchasing the Products in the future. Therefore, Plaintiff may purchase the
6 Products in the future. Moreover, Class members will continue to purchase the
7 Products, reasonably but incorrectly believing that they contain enough coffee to
8 make the advertised number of servings.

9 11. Defendant The Kraft Heinz Company is a corporation organized and
10 existing under the laws of the state of Delaware, with its principal place of business
11 at One PPG Place, Pittsburgh, Pennsylvania 15222. Maxwell House was founded in
12 1892 and was named after its first customer, the prestigious Maxwell House Hotel in
13 Nashville, Tennessee. According to the company's early advertising, President
14 Theodore Roosevelt drank a cup of coffee at the hotel in 1907 and declared it was,
15 "good to the last drop." The company adopted this slogan and has remained a
16 household name for over a century. Maxwell House generates millions of dollars in
17 sales each year. General Foods acquired Maxwell House in 1928 and was acquired
18 by Defendant in 1990 when Kraft merged with Philip Morris' General Foods unit,
19 which then merged with Heinz in 2015 to form a food conglomerate that generated
20 nearly \$25 billion in revenue in 2019.

FACTUAL ALLEGATIONS

A. The Products At Issue

23 12. The products at issue in this case consist of all varieties (e.g., different
24 types of roasts) and sizes (e.g., 11.5 oz., 30.6 oz., etc.) of Maxwell House ground
25 coffee canisters, tins, and bricks which make a specific servings representation on
26 the front label (e.g., "MAKES UP TO 90 6 FL CUPS").

27 13. These Products include, but are not limited to, the following varieties of
28 Maxwell House ground coffee canisters, tins, and bricks: Original Roast, Original

1 Roast Decaf, Half Caff, Smooth Bold, Dark Roast, Hazelnut, Vanilla, Master Blend,
2 Morning Boost, 100% Colombian, Wake Up Roast, Breakfast Blend, House Blend,
3 French Roast, Gourmet Roast, Intense Bold, and Light Roast.

4 14. The Products are sold across the United States through third party
5 retailers including grocery chains and large retail outlets.

6 **B. Defendant Grossly Overstates The Number Of Servings The Products**
7 **Can Make**

8 15. Defendant represents on the packaging of each of the Products that they
9 contain enough ground coffee to make up to a specified number of servings. For
10 example, Defendant prominently state on the front packaging of the Maxwell House
11 100% Colombian Roast, 10.5 oz product: “MAKES UP TO **90** 6 FL OZ CUPS.”

12 16. Representative images of the front packaging of some of the Products
13 are depicted below:

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1 17. Defendant places a materially identical representation on the front label
 2 of all the Products, although the number of represented servings of course varies
 3 based on the size of the Product.

4 18. On “Brewing Instructions” on the back label of all the Products,
 5 Defendant instructs consumers to use 1 tablespoon of ground coffee to make 1
 6 serving/cup of coffee.²

7 19. One tablespoon of Maxwell House ground coffee weighs
 8 approximately 5 grams.

9 20. Based on these standard measurements, it is evident that Defendant
 10 grossly overstates the number of servings the Products can make.

11 21. By way of example, as depicted above, Defendant represents on the
 12 10.5 oz tin of the Maxwell House 100% Colombian product that it “MAKES UP TO
 13 **90 6 FL OZ CUPS.**”

14 22. As set forth above, 1 tablespoon of ground coffee is needed to make 1
 15 serving/cup. Therefore, 90 tablespoons of ground coffee are needed to make 90
 16 servings/cups.

17 23. As set forth above, one tablespoon of Maxwell House’s ground coffee
 18 weighs approximately 5 grams. Therefore, 450 grams of ground coffee are needed to
 19 make the promised 90 servings [90 tablespoons x 5 grams].

20 24. However, the 10.5 oz tin has a net weight of 297 grams. Therefore, it
 21 contains only 66% of the amount of ground coffee required to make up to 90 cups of
 22 coffee [(297 / 450) x 100%]. This is equivalent to approximately 59 cups of coffee.

23 25. The same shortfall (i.e., only 59 cups of coffee) is calculated by
 24 dividing the total grams of coffee in the 10.5 oz. tin by the number of grams
 25 required to make a single serving [297 grams / 5 grams].

26 2 Hereinafter, the term “cup” is synonymous, and used interchangeably with, the
 27 term “serving.” Moreover, the term “cup” or “serving” is equivalent to 6 fluid
 28 ounces, based on Defendant’s representations.

1 26. In sum, the 10.5 oz. tin only contains enough coffee to make 59 cups,
 2 which is equivalent to 66% of the amount of ground coffee that is required to make
 3 the 90 cups of coffee:

- 4 • 297 grams / 450 grams = 66%
 5 • 59 cups / 90 cups = 66%

6 27. Thus, it is impossible for the Maxwell House 100% Colombian product
 7 to contain enough ground coffee to make anywhere close to 90 cups of coffee.
 8 Defendant's representation that the 10.5 oz. tin "MAKES UP TO **90** 6 FL OZ
 9 CUPS" is therefore false, deceptive, and misleading.

10 28. The same calculations apply equally to all of the other Products.
 11 According to their net weight, as well as the weight per tablespoon of ground coffee,
 12 they are unable to make anywhere close to the represented number of cups. These
 13 approximate calculations are set forth in the following chart:

Product Name	Net Weight (oz)	Net Weight (g)	Number of "Up To" Servings Promised	Approximate Number of Servings Received	Approximate Percentage of Servings Received
Original Roast	11.5 oz.	326g	90	65	72%
Original Roast (brick)	11.5 oz.	326g	90	65	72%
Original Roast	23 oz	652g	180	130	72%
Original Roast	30.6 oz	869g	240	174	73%
Original Roast	42.5 oz	1200g	325	240	74%
Original Roast	48 oz	1360g	380	272	72%
Original Roast Decaf	11 oz	311g	90	62	69%
Original Roast Decaf (brick)	11 oz	311g	90	62	69%
Original Roast Decaf	22 oz	623g	180	125	69%
Original Roast Decaf	29.3 oz	830g	240	166	69%
Half Caff	11 oz	311g	90	62	69%
Half Caff	11 oz	311g	90	62	69%

1	(brick)					
2	Half Caff	25.6 oz	726g	210	145	69%
3	Smooth Bold	11.5 oz	326g	90	65	72%
4	Dark Roast	10.5 oz	297g	90	59	66%
5	Dark Roast (brick)	10.5 oz	297g	90	59	66%
6	Dark Roast	24.5 oz	694g	210	139	66%
7	Hazelnut	11 oz	311g	90	62	69%
8	Vanilla	11 oz	311g	90	62	69%
9	Master Blend (brick)	11.5 oz.	326g	90	65	72%
10	Master Blend	11.5 oz.	326g	90	65	72%
11	Master Blend	26.8 oz	760g	210	152	72%
12	Morning Boost	11.5 oz	326g	90	65	72%
13	Morning Boost	26.7 oz	759g	210	152	72%
14	100% Colombian (brick)	10.5 oz	297g	90	59	66%
15	100% Colombian	10.5 oz	297g	90	59	66%
16	Wake Up Roast	11.5 oz	326g	90	65	72%
17	Wake Up Roast	30.65 oz	869g	240	174	73%
18	Breakfast Blend	11 oz	311g	90	62	69%
19	Breakfast Blend (brick)	11 oz	311g	90	62	69%
20	Breakfast Blend	29.3 oz	830g	240	166	69%
21	House Blend	10.5 oz	297g	90	59	66%
22	French Roast (brick)	11 oz	311g	90	62	69%
23	French Roast	11 oz	311g	90	62	69%
24	Gourmet Roast	25.6 oz	726g	210	145	69%
25	Gourmet Roast (brick)	11 oz	311g	90	62	69%
26	Intense Bold	11.5 oz	326g	90	65	72%
27	Light Roast	11.5 oz	326g	90	65	72%

29. There are 38 varieties of the Products listed in the chart above. Each and every one of them contains substantially less ground coffee than is required to

1 make the recommended number of “up to” servings promised on the packaging. On
2 average, these Products contain enough ground coffee to make only 70% of the
3 number of servings promised on the packaging, thus revealing a systematic course
4 of unlawful conduct by Defendant to deceive and shortchange consumers.

5 **C. The False And Deceptive Serving Amount Representation Harms**
6 **Consumers**

7 30. Plaintiff and other consumers purchased the Products relying on
8 Defendant’s serving amount representations on the Products’ packaging.

9 31. Plaintiff and other consumers reasonably expect that, if they follow the
10 serving instructions, the Products will produce the number of servings/cups of
11 coffee as represented on the Products’ packaging.

12 32. Plaintiff’s and consumer’s reasonable belief that the Products are able
13 to make up to the represented number of cups of coffee was a significant factor in
14 each of their decisions to purchase the Products.

15 33. Plaintiff’s and Class members did not know, and had no reason to
16 know, that the Products’ labeling vastly overstates the number of cups of coffee they
17 are able to make. At the time of purchase, a reasonable consumer cannot measure or
18 calculate how many servings the Products can make. Nor are reasonable consumers
19 expected to keep track of the precise number of cups of coffee they make over a
20 period of time.

21 34. As the entity responsible for the development, manufacturing,
22 packaging, advertising, distribution and sale of the Products, Defendant knew or
23 should have known that each of the Products falsely and deceptively overstates the
24 number of servings of coffee that can be made.

25 35. Defendant also knew or should have known that Plaintiff and other
26 consumers, in purchasing the Products, would rely on Defendant’s serving size
27 representations. Nonetheless, Defendant deceptively advertises the Products in order

1 to deceive consumers into believing they are getting considerably more coffee than
2 they are paying for.

3 36. Consumers are willing to pay more for the Products based on the belief
4 that the Products contain enough ground coffee to make up to the represented
5 number of servings. Plaintiff and other consumers would have paid significantly less
6 for the Products, or would not have purchased them at all, had they known that they
7 were getting fewer servings of coffee than what they were promised.

8 37. By analogy, if a consumer purchased a six-pack of soda, but only
9 received four cans of soda, the consumer would only be receiving 66.67% of what
10 she paid for. The situation here is no different in terms of the harm to the consumer.
11 The only difference is that, due to the nature of the Products, Defendant is able to
12 conceal the gross shortfall of coffee because reasonable consumers do not keep track
13 of the number of cups of coffee they make over a period of time.

14 38. Therefore, Plaintiff and other consumers purchasing the Products have
15 suffered injury in fact and lost money as a result of Defendant's false and deceptive
16 practices, as described herein.

CLASS ACTION ALLEGATIONS

18 39. Plaintiff brings this class action pursuant to Fed. R. Civ. P 23 and all
19 other applicable laws and rules, individually, and on behalf of all members of the
20 following Classes:

Nationwide Class

All persons who purchased any of the Products in the United States within the applicable statute of limitations period.

California Subclass

All persons who purchased any of the Products in the state of California within the applicable statute of limitations period.

1 California Consumer Subclass

2 All persons who purchased any of the Products in the state of California for
3 personal, household, or family purposes, within the applicable statute of
4 limitations period.

5 40. Excluded from the Classes are the following individuals and/or entities:
6 Defendant and its parents, subsidiaries, affiliates, officers and directors, current or
7 former employees, and any entity in which Defendant has a controlling interest; all
8 individuals who make a timely election to be excluded from this proceeding using
9 the correct protocol for opting out; and all judges assigned to hear any aspect of this
10 litigation, as well as their immediate family members.

11 41. Plaintiff reserves the right to modify or amend the definition of the
12 proposed Classes before the Court determines whether certification is appropriate.

13 42. Plaintiff is a member of the Classes.

14 43. Numerosity: The proposed Classes are so numerous that joinder of all
15 members would be impractical. The Products are sold throughout the state of
16 California and the United States, by third-party retailers. The number of individuals
17 who purchased the Products during the relevant time period is at least in the
18 thousands. Accordingly, Class members are so numerous that their individual
19 joinder herein is impractical. While the precise number of Class members and their
20 identities are unknown to Plaintiff at this time, these Class members are identifiable
21 and ascertainable.

22 44. Common Questions Predominate: There are questions of law and fact
23 common to the proposed Classes that will drive the resolution of this action and will
24 predominate over questions affecting only individual Class members. These
25 questions include, but are not limited to, the following:

- 26 a. Whether Defendant misrepresented material facts and/or failed to
27 disclose material facts in connection with the packaging, marketing,
28 distribution, and sale of the Products;

- 1 b. Whether Defendant's use of false or deceptive packaging and
- 2 advertising constituted false or deceptive advertising;
- 3 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent
- 4 business practices;
- 5 d. Whether Defendant's unlawful conduct, as alleged herein, was
- 6 intentional and knowing;
- 7 e. Whether Plaintiff and the Class are entitled to damages and/or
- 8 restitution, and in what amount;
- 9 f. Whether Defendant is likely to continue using false, misleading or
- 10 unlawful conduct such that an injunction is necessary; and
- 11 g. Whether Plaintiff and the Classes are entitled to an award of
- 12 reasonable attorneys' fees, interest, and costs of suit.

13 45. Defendant has engaged in a common course of conduct giving rise to
14 violations of the legal rights sought to be enforced uniformly by Plaintiff and Class
15 members. Similar or identical statutory and common law violations, business
16 practices, and injuries are involved. The injuries sustained by members of the
17 proposed Classes flow, in each instance, from a common nucleus of operative fact,
18 namely, Defendant's deceptive packaging and advertising of the Products. Each
19 instance of harm suffered by Plaintiff and Class members has directly resulted from
20 a single course of illegal conduct. Each Class member has been exposed to the same
21 deceptive practice, as each of the Products: (a) bear the materially same serving
22 amount representations, and (b) do not contain enough ground coffee to make
23 anywhere close to the represented serving amount. Therefore, individual questions,
24 if any, pale in comparison to the numerous common questions presented in this
25 action.

26 46. Typicality: The representative Plaintiff's claims are typical of those of
27 the proposed Classes, as all members of the proposed Classes are similarly affected
28 by Defendant's uniform unlawful conduct as alleged herein.

47. Adequacy: Plaintiff will fairly and adequately protect the interests of the proposed Classes as his interests do not conflict with the interests of the members of the proposed Classes he seeks to represent, and he has retained counsel competent and experienced in class action litigation. The interests of the members of the Classes will be fairly and adequately protected by the Plaintiff and his counsel.

48. Superiority: Because of the relatively small amount of damages at issue for each individual Class member, no Class member could afford to seek legal redress on an individual basis. Furthermore, individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. A class action is superior to any alternative means of prosecution. Defendant has also acted, or failed to act, on grounds generally applicable to Plaintiff and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes.

COUNT I
Violation of California's Consumers Legal Remedies Act
California Civil Code § 1750, et seq.
(for the California Consumer Subclass)

49. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set forth herein.

50. Plaintiff brings this claim individually and on behalf of the members of the proposed California Consumer Subclass against Defendant pursuant to California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

51. The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), Defendant is a “person” within the meaning of Cal. Civ. Code § 1761(c), and the purchases of such Products by Plaintiff and members of the California

1 Consumer Subclass constitute “transactions” within the meaning of Cal. Civ. Code §
 2 1761(e).

3 52. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or
 4 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
 5 quantities which they do not have ...” By marketing the Products with their current
 6 packaging, Defendant have represented and continue to represent that the Products
 7 have characteristics (i.e., contain enough ground coffee to make up to a specified
 8 number of servings) that they do not have. Therefore, Defendant has violated section
 9 1770(a)(5) of the CLRA.

10 53. Cal. Civ. Code § 1770(a)(7) prohibits “[r]espresenting that goods or
 11 services are of a particular standard, quality, or grade, or that goods are of a
 12 particular style or model, if they are of another.” By marketing the Products with
 13 their current packaging, Defendant have represented and continue to represent that the
 14 Products are of a particular standard (i.e., contain enough ground coffee to make up to
 15 a certain number of servings) which they do not possess. Therefore, Defendant has
 16 violated section 1770(a)(7) of the CLRA.

17 54. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services
 18 with intent not to sell them as advertised.” By marketing the Products as containing
 19 enough ground coffee to make a specified number of servings, but not intending to sell
 20 the Products as such, Defendant has violated section 1770(a)(9) of the CLRA.

21 55. At all relevant times, Defendant has known or reasonably should have
 22 known that the Products did not contain enough ground coffee to make the
 23 represented number of servings, and that Plaintiff and other members of the
 24 California Consumer Subclass would reasonably and justifiably rely on the
 25 packaging in purchasing the Products.

26 56. Plaintiff and members of the California Consumer Subclass have
 27 justifiably relied on Defendant’s misleading representations when purchasing the
 28 Products. Moreover, based on the materiality of Defendant’s misleading and

1 deceptive conduct, reliance may be presumed or inferred for Plaintiff and members
2 of California Consumer Subclass.

3 57. Plaintiff and members of the California Consumer Subclass have
4 suffered and continue to suffer injuries caused by Defendant because they would
5 have paid significantly less for the Products, or would not have purchased them at
6 all, had they known that the Products contain substantially less ground coffee to
7 make the promised number of servings.

8 58. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a
9 declaration of venue attached to this Complaint.

10 59. On June 18, 2020 Plaintiff, by and through his counsel, sent a notice
11 letter by certified mail to Defendant of his intent to pursue claims under the CLRA,
12 and an opportunity to cure, consistent with Cal. Civ. Code § 1782. Defendant
13 received this notice and demand letter on June 22, 2020. Because Defendant has
14 failed to fully rectify or remedy the damages caused after waiting more than the
15 statutorily required 30 days after it received the foregoing notice and demand letters,
16 Plaintiff is timely filing this Complaint for damages as permitted under Cal. Civ.
17 Code § 1782(d).

18 60. Plaintiff also requests that this Court enjoin Defendant from continuing
19 to violate the CLRA as discussed herein and/or from violating the CLRA in the
20 future and to order restitution to Plaintiff and the Class. Plaintiff also requests an
21 award of actual and punitive damages, attorneys' fees and costs, and any other relief
22 that the Court deems proper, pursuant to California Civil Code § 1780(a).

COUNT II
Violation of California's False Advertising Law
California Business & Professions Code § 17500, et seq.
(for the California Subclass and California Consumer Subclass)

27 61. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
28 if fully set forth herein.

1 62. Plaintiff brings this claim individually and on behalf of the members of
2 the proposed California Subclass and California Consumer Subclass against
3 Defendant pursuant to California's False Advertising Law ("FAL"), Cal. Bus. & Prof.
4 Code § 17500, *et seq.*

5 63. The FAL makes it "unlawful for any person to make or disseminate or
6 cause to be made or disseminated before the public . . . in any advertising device . . .
7 or in any other manner or means whatever, including over the Internet, any
8 statement, concerning . . . personal property or services professional or otherwise, or
9 performance or disposition thereof, which is untrue or misleading and which is
10 known, or which by the exercise of reasonable care should be known, to be untrue
11 or misleading." Cal. Bus. & Prof. Code § 17500.

12 64. Defendant has represented and continue to represent to the public,
13 including Plaintiff and members of both the California Subclass and California
14 Consumer Subclass, through its deceptive packaging, that the Products contain
15 enough ground coffee to make substantially more servings than they can actually
16 make. Because Defendant has disseminated misleading information regarding the
17 Products, and Defendant knows, knew, or should have known through the exercise
18 of reasonable care that the representations were and continue to be misleading,
19 Defendant has violated the FAL.

20 65. As a result of Defendant's false advertising, Defendant has and
21 continues to unlawfully obtain money from Plaintiff and members of the California
22 Subclass and California Consumer Subclass.

23 66. Plaintiff requests that this Court cause Defendant to restore this
24 fraudulently obtained money to him and members of both the California Subclass
25 and California Consumer Subclass, to disgorge the profits Defendant made on these
26 transactions, and to enjoin Defendant from violating the FAL or violating it in the
27 same fashion in the future as discussed herein. Otherwise, Plaintiff and members of
28 the California Subclass and California Consumer Subclass may be irreparably

1 harmed and/or denied an effective and complete remedy if such an order is not
2 granted.

3 **COUNT III**

4 **Violation of California's Unfair Competition Law ("UCL"),**
5 **California Business & Professions Code § 17200, et seq.**
(for the California Subclass and California Consumer Subclass)

6 67. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
7 if fully set forth herein.

8 68. Plaintiff brings this claim individually and on behalf of the members of
9 the proposed California Subclass and California Consumer Subclass against
10 Defendant.

11 69. The UCL, Cal. Bus. & Prof Code § 17200, provides, in pertinent part,
12 that "unfair competition shall mean and include unlawful, unfair or fraudulent
13 business practices and unfair, deceptive, untrue or misleading advertising . . .".

14 70. Under the UCL, a business act or practice is "unlawful" if it violates
15 any established state or federal law. Defendant's false and misleading advertising of
16 the Products was and continues to be "unlawful" because it violates the CLRA, the
17 FAL, and other applicable laws as described herein. As a result of Defendant's
18 unlawful business acts and practices, Defendant has unlawfully obtained money
19 from Plaintiff and members of the California Subclass and California Consumer
20 Subclass.

21 71. Under the UCL, a business act or practice is "unfair" if the defendant's
22 conduct is substantially injurious to consumers, offends public policy, and is
23 immoral, unethical, oppressive, and unscrupulous, as the benefits for committing
24 such acts or practices are outweighed by the gravity of the harm to the alleged
25 victims. Defendant's conduct was and continues to be of no benefit to purchasers of
26 the Products, as it is misleading, unfair, unlawful, and is injurious to consumers who
27 rely on the packaging. Deceiving consumers as to how many cups of coffee the
28 Products can make is of no benefit to consumers. Therefore, Defendant's conduct

was and continues to be “unfair.” As a result of Defendant’s unfair business acts and practices, Defendant has and continues to unfairly obtain money from Plaintiff and members of the California Subclass and California Consumer Subclass.

4 72. Under the UCL, a business act or practice is “fraudulent” if it actually
5 deceives or is likely to deceive members of the consuming public. Defendant’s
6 conduct here was and continues to be fraudulent because it has the effect of
7 deceiving consumers into believing that the Products contain enough ground coffee
8 to make substantially more servings than they can actually make. Because
9 Defendant misled Plaintiff and members of the California Subclass and California
10 Consumer Subclass, Defendant’s conduct was “fraudulent.”

11 73. Plaintiff requests that this Court cause Defendant to restore this
12 unlawfully, unfairly, and fraudulently obtained money to them, and members of the
13 California Subclass and California Consumer Subclass, to disgorge the profits
14 Defendant made on these transactions, and to enjoin Defendant from violating the
15 UCL or violating it in the same fashion in the future as discussed herein. Otherwise,
16 Plaintiff and members of the California Subclass and California Consumer Subclass
17 may be irreparably harmed and/or denied an effective and complete remedy if such
18 an order is not granted.

COUNT IV
Breach of Express Warranty
(for the California Subclass and California Consumer Subclass)

21 74. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
22 if fully set forth herein.

23 75. Plaintiff brings this claim individually and on behalf of the members of
24 the proposed California Subclass and California Consumer Subclass against
25 Defendant.

26 76. California's express warranty statute provides that "(a) Any affirmation
27 of fact or promise made by the seller to the buyer which relates to the goods and
28 becomes part of the basis of the bargain creates an express warranty that the goods

1 shall conform to the affirmation or promise,” and “(b) Any description of the goods
2 which is made part of the basis of the bargain creates an express warranty that the
3 goods shall conform to the description.” Cal. Com. Code § 2313.

4 77. Defendant has expressly warranted on the Products’ packaging that
5 they can make up to a specific number of servings. For example, Defendant
6 expressly state on the packaging of the 30.6 oz. canister of the Original Roast that it
7 “MAKES UP TO **240** 6 FL OZ CUPS.” However, as alleged herein, this express
8 representation is patently false, as the 30.6 oz. canister can only make up to 174
9 cups of coffee, or only 73% of the amount of ground coffee promised by Defendant.
10 All of the other varieties of the Products contain materially identical express
11 representations that are false.

12 78. These representations about the Products: (a) are affirmations of fact or
13 promises made by Defendant to consumers that the Products contain enough ground
14 coffee to make a specific number of servings; (b) became part of the basis of the
15 bargain to purchase the Products when Plaintiff and other consumers relied on the
16 representation; and (c) created an express warranty that the Products would conform
17 to the affirmations of fact or promises. In the alternative, the representations about
18 the Products are descriptions of goods which were made as part of the basis of the
19 bargain to purchase the Products, and which created an express warranty that the
20 Products would conform to the product description.

21 79. Plaintiff and members of the California Subclass and California
22 Consumer Subclass reasonably and justifiably relied on the foregoing express
23 warranties, believing that the Products did in fact conform to those warranties.

24 80. Defendant has breached the express warranties made to Plaintiff and
25 members of the California Subclass and California Consumer Subclass by failing to
26 manufacture the Products with enough ground coffee to make the specific number of
27 servings that were expressly warranted on the packaging.

28 81. Plaintiff and members of the California Subclass and California

1 Consumer Subclass paid a premium price for the Products but did not obtain the full
2 value of the Products as represented. If they had known of the true nature of the
3 Products, they would not have been willing to pay the premium price associated
4 with the Products.

5 82. As a result, Plaintiff and members of the California Subclass and
6 California Consumer Subclass suffered injury and deserve to recover all damages
7 afforded under the law.

8 83. Within a reasonable amount of time after Plaintiff discovered that
9 Defendant did in fact breach the express warranty, Plaintiff notified Defendant of
10 the breach.

COUNT V
Breach of Implied Warranty
(for the California Subclass and California Consumer Subclass)

14 84. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
15 if fully set forth herein.

16 85. Plaintiff brings this claim individually and on behalf of the members of
17 the proposed California Subclass and California Consumer Subclass against
18 Defendant.

19 86. California's implied warranty of merchantability statute provides that
20 "a warranty that the goods shall be merchantable is implied in a contract for their
21 sale if the seller is a merchant with respect to goods of that kind." Cal. Com. Code §
22 2314(1).

23 87. California's implied warranty of merchantability statute also provides
24 that “[g]oods to be merchantable must be at least such as . . . (f) conform to the
25 promises or affirmations of fact made on the container or label if any.” Cal. Com.
26 Code § 2314(2)(f).

27 88. Defendant is a merchant with respect to the sale of the Products.
28 Therefore, a warranty of merchantability is implied in every contract for sale of the

Products to California consumers.

2 89. By advertising the Products with their current packaging, Defendant
3 made an implied promise that the Products contain enough ground coffee to make
4 up to a specific number of servings. The Products have not “conformed to the
5 promises...made on the container or label” because they do not contain enough
6 ground coffee to make up to the specific number of servings. Plaintiff, as well as
7 California consumers, did not receive the goods as impliedly warranted by
8 Defendant to be merchantable.

9 90. Therefore, the Products are not merchantable under California law and
10 Defendant has breached its implied warranty of merchantability in regard to the
11 Products.

12 91. If Plaintiff and members of the California Subclass and California
13 Consumer Subclass had known that the Products could not make as many servings
14 of coffee as represented, they would not have been willing to pay the premium price
15 associated with them. Therefore, as a direct and/or indirect result of Defendant's
16 breach, Plaintiff and members of the California Subclass and California Consumer
17 Subclass have suffered injury and deserve to recover all damages afforded under the
18 law.

COUNT VI
Intentional Misrepresentation
(for the California Subclass and California Consumer Subclass)

21 92. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
22 if fully set forth herein.

23 93. Plaintiff brings this claim individually and on behalf of the members of
24 the proposed California Subclass and California Consumer Subclass against
25 Defendant.

26 94. Defendant marketed the Products in a manner indicating that they
27 contain enough ground coffee to make up to a specific number of servings.
28 However, the Products cannot make anywhere close to the represented number of

servings. Therefore, Defendant has made misrepresentations about the Products.

95. Defendant's misrepresentations regarding the Products are material to a reasonable consumer because they relate to the amount of product the consumer is receiving and paying for. A reasonable consumer would attach importance to such representations and would be induced to act thereon in making purchase decisions.

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

9 97. Defendant intends that Plaintiff and other consumers rely on these
10 representations, as evidenced by the intentional and conspicuous placement of the
11 misleading representations on the Products' packaging by Defendant.

12 98. Plaintiff and members of the California Subclass and California
13 Consumer Subclass have reasonably and justifiably relied on Defendant's
14 intentional misrepresentations when purchasing the Products, and had the correct
15 facts been known, would not have purchased them at the prices at which they were
16 offered.

17 99. Therefore, as a direct and proximate result of Defendant's intentional
18 misrepresentations, Plaintiff and members of the California Subclass and California
19 Consumer Subclass have suffered economic losses and other general and specific
20 damages, including but not limited to the amounts paid for the Products, and any
21 interest that would have accrued on those monies, all in an amount to be proven at
22 trial.

COUNT VII
Negligent Misrepresentation
(for the California Subclass and California Consumer Subclass)

25 100. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
26 if fully set forth herein.

101. Plaintiff brings this claim individually and on behalf of the members of
the proposed California Subclass and California Consumer Subclass against

1 Defendant.

2 102. Defendant has marketed the Products in a manner indicating that they
3 contain enough ground coffee to make a specific number of servings. However, the
4 Products cannot make anywhere close to the represented number of servings.
5 Therefore, Defendant has made misrepresentations about the Products.

6 103. Defendant's misrepresentations regarding the Products are material to a
7 reasonable consumer because they relate to the amount of product the consumer is
8 receiving and paying for. A reasonable consumer would attach importance to such
9 representations and would be induced to act thereon in making purchase decisions.

10 104. At all relevant times when such misrepresentations were made,
11 Defendant knew or had been negligent in not knowing that that the Products did not
12 contain enough ground coffee to make the specified number of servings. Defendant
13 had no reasonable grounds for believing its misrepresentations were not false and
14 misleading.

15 105. Defendant intends that Plaintiff and other consumers rely on these
16 representations, as evidenced by the intentional and conspicuous placement of the
17 misleading representations on the Products' packaging by Defendant.

18 106. Plaintiff and members of the California Subclass and California
19 Consumer Subclass have reasonably and justifiably relied on Defendant's negligent
20 misrepresentations when purchasing the Products, and had the correct facts been
21 known, would not have purchased them at the prices at which they were offered.

22 107. Therefore, as a direct and proximate result of Defendant's negligent
23 misrepresentations, Plaintiff and members of the California Subclass and California
24 Consumer Subclass have suffered economic losses and other general and specific
25 damages, including but not limited to the amounts paid for the Products, and any
26 interest that would have accrued on those monies, all in an amount to be proven at
27 trial.

28

COUNT VIII
Quasi Contract/Unjust Enrichment/Restitution
(for the California Subclass and California Consumer Subclass)

108. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set forth herein.

109. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass and California Consumer Subclass against Defendant.

110. As alleged herein, Defendant has intentionally and recklessly made misleading representations to Plaintiff and members of the California Subclass and California Consumer Subclass to induce them to purchase the Products. Plaintiff and members of the California Subclass and California Consumer Subclass have reasonably relied on the misleading representations and have not received all of the benefits promised by Defendant. Plaintiff and members of the California Subclass and California Consumer Subclass therefore have been induced by Defendant's misleading and deceptive representations about the Products, and paid more money to Defendant for the Products than they otherwise would and/or should have paid.

111. Plaintiff and members of the California Subclass and California Consumer Subclass have conferred a benefit upon Defendant as Defendant has retained monies paid to it by Plaintiff and members of the California Subclass and California Consumer Subclass.

112. The monies received were obtained under circumstances that were at the expense of Plaintiff and members of the California Subclass and California Consumer Subclass – i.e., Plaintiff and members of the California Subclass and California Consumer Subclass did not receive the full value of the benefit conferred upon Defendant.

113. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or compensation conferred upon it without paying Plaintiff and the members of the California Subclass and California Consumer Subclass back for the difference

of the full value of the benefits compared to the value actually received.

114. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the California Subclass and California Consumer Subclass are entitled to restitution, disgorgement, and/or the imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendant from Plaintiff and members of the California and California Consumer Subclasses as a result of its deceptive, misleading, and unlawful conduct as alleged herein.

COUNT IX

Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*
Implied Warranty of Merchantability Under California Law
(*for the Nationwide Class*)

11 115. Plaintiff repeats the allegations contained in paragraphs 1-48 above as
12 if fully set forth herein.

13 116. Plaintiff brings this claim individually and on behalf of the proposed
14 Nationwide Class.

15 117. The Products are consumer products within the meaning of 15 U.S.C. §
16 2301(1).

17 118. Plaintiff and members of the Nationwide Class are consumers within
18 the meaning of 15 U.S.C. § 2301(3).

19 119. Defendant is a supplier and warrantor within the meaning of 15 U.S.C.
20 § 2301(4) and (5).

120. In connection with the sale of the Products, Defendant issued an
“implied warranty” within the meaning of 15 U.S.C. § 2301(7), which warranted
that the Products could make up to a specific number of servings, when in fact the
Products do not contain enough ground coffee to make up to the specific number of
servings.

26 121. By reason of Defendant's breach of implied warranty representing that
27 the Products can make up to a specific number of servings, Defendant has violated
28 the statutory rights due to Plaintiff and members of the Nationwide Class pursuant

1 to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, thereby damaging
2 Plaintiff and members of the Nationwide Class

3 122. Prior to filing this action, Plaintiff, by and through his counsel,
4 provided Defendant with written notice of their claims pursuant to 15 U.S.C. §
5 2310(e) and also notified Defendant that he was acting on behalf of a Classes
6 defined as all consumers who purchased the Products during the applicable statute
7 of limitations period.

8 123. Plaintiff and the other members of the Nationwide Class have suffered
9 injury and are entitled to damages in an amount to be proven at trial, along with
10 attorney's fees and costs.

PRAYER FOR RELIEF

12 **WHEREFORE**, Plaintiff, individually and on behalf of the Classes,
13 respectfully prays for following relief:

14 A. Certification of this case as a class action on behalf of the Classes
15 defined above, appointment of Plaintiff as Class representative, and appointment of
16 his counsel as Class counsel;

17 B. A declaration that Defendant's actions, as described herein, violate the
18 claims described herein;

19 C. An award of injunctive and other equitable relief as is necessary to
20 protect the interests of Plaintiff and the Classes, including, *inter alia*, an order
21 prohibiting Defendant from engaging in the unlawful act described above;

22 D. An award to Plaintiff and the proposed Classes of restitution and/or
23 other equitable relief, including, without limitation, restitutionary disgorgement of
24 all profits and unjust enrichment that Defendant obtained from Plaintiff and the
25 proposed Classes as a result of its unlawful, unfair and fraudulent business practices
26 described herein;

E. An award of all economic, monetary, actual, consequential, compensatory, statutory, and treble damages caused by Defendant's conduct;

F. An award of punitive damages;

F. An award to Plaintiff and his counsel of his reasonable expenses and attorneys' fees;

4 G. An award to Plaintiff and the proposed Classes of pre- and post-
5 judgment interest, to the extent allowable; and

6 H. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Classes, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August 7, 2020 **FARUQI AND FARUQI, LLP**

By: /s/ Benjamin Heikali

Benjamin Heikali

Joshua Nassir

The Wand Law Firm, P.C.

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Attorneys for Plaintiff and the Putative Classes