

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION**

ANDREA FAHEY, individually and on  
behalf of all others similarly situated,

Plaintiff,

- against -

DANONE US LLC,

Defendant

Class Action Complaint

Jury Trial Demanded

Plaintiff Andrea Fahey (“Plaintiff”) alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

**I. PROPERTIES OF COFFEE**

1. According to one legend, the discovery of coffee owes to an East African shaman and goat herder known only as “Omar.”

2. In response to a particularly bad famine, Omar climbed an odd-looking tree, hoping for sustenance from its red and yellow berries.

3. Since these fruits were bitter and difficult to digest, the villagers roasted them before boiling them in water.

4. The result was a fragrant yet bitter drink, which revitalized and sustained those who consumed it.

5. To temper coffee’s natural acidity or brightness, it is believed that villagers added goat’s milk.

6. These dairy proteins softened its bitterness by binding to the abundant polyphenols, such as tannins.

7. Moreover, they reacted with coffee's chlorogenic acids ("CGA"), reducing its acidity.

8. Over time, it was realized that variations in protein and fat content of added dairy ingredients rendered coffee more palatable.

9. This was because the fat content thickened coffee's watery texture, while the natural sugar from lactose added sweetness, improving its taste.<sup>1</sup>

10. According to National Coffee Drinking Trends ("NCDT") published by the National Coffee Association ("NCA"), 68% of American coffee drinkers add thickening substances in the form of dairy products.

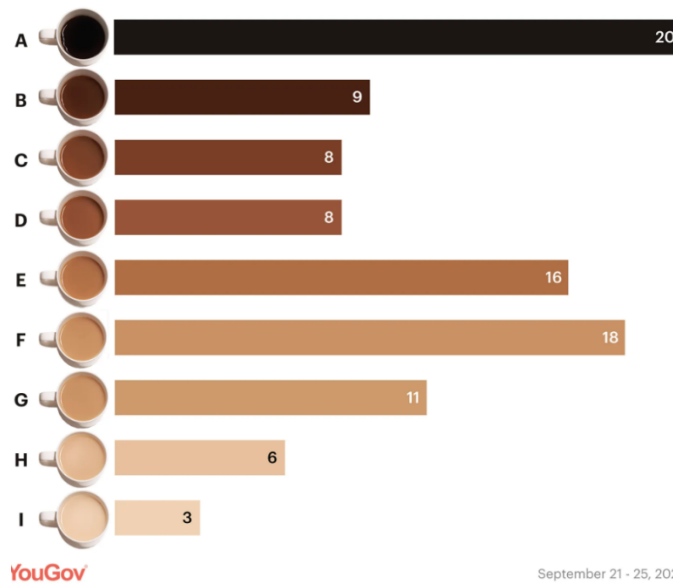
11. When presented with various cups of coffee, 79% of coffee drinkers expressed a preference a brown, golden, or cream-colored cup, while only 20% preferred their coffee black.

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<sup>1</sup> <https://www.arla.com/articles/why-do-we-put-milk-in-coffee/>.

**One in five American coffee drinkers usually like their coffee served black**

Which coffee cup best matches how you usually like your coffee? (% of U.S. adult citizens who drink coffee)



12. The types of dairy products added to coffee and similar beverages range from skim milk, with no fat and some protein, to heavy cream, high in fat and protein.

13. The most common addition to coffee is cream, added by over one third of coffee drinkers.

14. Cream is known for its “creamy” taste because milkfat contains hundreds of lactones, aroma compounds which contribute to its taste.

## II. LEGAL BACKGROUND

15. Though consumers increasingly sought to add cream to coffee and similar types of beverages, they were stymied by unscrupulous merchants who substituted ingredients with lower fat and/or protein content, yet labeled them as “cream,” “coffee cream,” and “coffee creamer,” while promoting their use of cream.

16. To curb these deceptive practices and protect the public, Congress passed the Federal Food, Drug and Cosmetic Act (“FFDCA”). 21 U.S.C. § 301 *et seq*; 21 U.S.C. § 343 (enumerating ways a food could be “misbranded”)

17. Since “consumers initially [] rely on extrinsic cues such as visual information on labels and packaging,” thereby “develop[ing] sensory [and other] expectations” about its ingredients, these laws required food labels to provide truthful and complete information.<sup>2</sup>

18. They “[were] premised on the simple notion that consumers value ‘the real thing’ versus a close substitute and should be able to rely on the label to readily distinguish between the two.”<sup>3</sup>

19. Perhaps the most significant contribution of the FFDCA was the development of food standards, which sought to prevent economic adulteration of foods and beverages that were staples in the American diet.

20. Florida adopted the FFDCA and accompanying regulations through the Food Safety Act (“FSA”). Fla. Stat. § 500.01 *et seq.*; Fla. Stat. § 500.02(2) (“Provide legislation which shall be uniform, as provided in this chapter, and administered so

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<sup>2</sup> Lancelot Miltgen et al., “Communicating Sensory Attributes and Innovation through Food Product Labeling,” *Journal of Food Product Marketing*, 22.2 (2016): 219-239; Helena Blackmore et al., “A Taste of Things to Come: The Effect of Extrinsic and Intrinsic Cues on Perceived Properties of Beer Mediated by Expectations,” *Food Quality and Preference*, 94 (2021): 104326.

<sup>3</sup> Steven Steinborn, Hogan & Hartson LLP, *Regulations: Making Taste Claims*, PreparedFoods.com, August 11, 2006.

far as practicable in conformity with the provisions of, and regulations issued under the authority of, the [FFDCA.]); FL Admin Code § 5K-4.002(1)(d) (adopting 21 C.F.R. Parts 101 and 102).

### III. PRODUCT LABELING

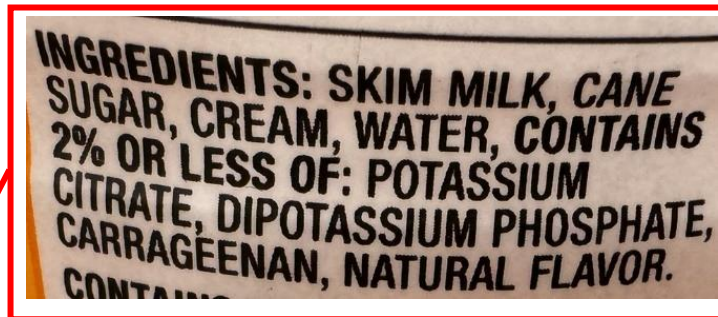
21. To appeal to the high percentage of the public who add cream to their coffee, Danone US LLC (“Defendant”) produces and sells “Coffee Creamer” described as “Made With Real Cream & Sugar,” adjacent to a thick, white liquid being added to hot coffee, under the Dunkin’ Donuts brand (“Product”).



22. However, the fine print of the ingredient list, on the lower part of the reverse side of the container reveal that despite the front label statements of “Coffee Creamer,” described as “Made With Real Cream & Sugar,” the amount of cream is de minimis in absolute and relative terms and inconsistent with what consumers expect.



**INGREDIENTS: SKIM MILK, CANE SUGAR, CREAM, WATER, CONTAINS 2% OR LESS OF: POTASSIUM CITRATE, DIPOTASSIUM PHOSPHATE, CARRAGEENAN, NATURAL FLAVOR.**



23. Though the ingredients, listed in order of predominance by weight, indicate the presence of cream, the primary and predominant dairy ingredient is “skim milk,” followed by “cane sugar” and only then, the highlighted ingredient of

“cream.” 21 C.F.R. § 101.4(a).

#### **IV. LABELING IS MISLEADING**

24. Merriam-Webster defines cream as the “yellowish part of milk containing from 18 to about 40 percent butterfat.”

25. Google Dictionary defines cream as “the thick white or pale yellow fatty liquid which rises to the top when milk is left to stand.”

26. The Britannica Dictionary defines cream as “the thick part of milk that rises to the top; the part of milk that contains fat.”

27. Collins Dictionary defines cream as “a thick yellowish-white liquid taken from milk.”

28. Dictionary.com defines cream as “the fatty part of milk, which rises to the surface when the liquid is allowed to stand unless homogenized.”

29. The FDA defined “cream” consistent with this commonsense understanding, as “the liquid milk product high in fat separated from milk...[which] contains not less than 18 percent milkfat.” 21 C.F.R. § 131.3(a).

30. Along the continuum of dairy products, coffee cream, also called light cream or table cream, was defined as “contain[ing] not less than 18 percent but less than 30 percent milkfat.” 21 C.F.R. § 131.155(a).

31. In considering whether a food’s label is misleading, it is required to “take[] into account, among other things, not only representations made or suggested

by statement, word, design, [] or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to consumers.” Fla. Stat. § 500.03(2)(b).

32. The Product’s labeling of “Coffee Creamer,” described as “Made With Real Cream,” fails to “prominently and conspicuously reveal facts relative to the proportions or absence of” cream, because its predominant dairy ingredient is not cream, but nonfat, skim milk, and it contains more sugar than cream. Fla. Stat. § 500.03(2)(b).

33. The replacement of cream, having between 18 and 30% fat, with skim or nonfat milk, having no fat, is “of material interest to consumers,” because cream costs more than skim milk. Fla. Stat. § 500.03(2)(b).

34. The replacement of cream, having between 18 and 30% fat, with skim or nonfat milk, is “of material interest to consumers,” because cream provides greater texture to coffee or similar types of beverages to which it is added. Fla. Stat. § 500.03(2)(b).

35. The Product is “misbranded” and misleads consumers because its labeling as “Coffee Creamer,” described as “Made With Real Cream,” causes them to expect cream was its predominant dairy ingredient, when this statement is false,



due to the predominance of nonfat milk and a greater amount of sugar than cream.

21 U.S.C. § 343(a)(1); Fla. Stat. § 500.11(1)(a).

36. The Product is “misbranded” and misleads consumers because “it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by statute or by rules,” “coffee cream.” 21 U.S.C. § 343(g); Fla. Stat. § 500.11(1)(g).

37. First, “[the Product] [fails to] conforms to such definition and standard” because it “contains [] less than 18 percent [] milkfat” required for such products. 21 CFR 131.155(a).

38. This is confirmed by reviewing nutrition information for similarly represented products, like Publix coffee creamer (right), which conforms to the federal and state standard, while the Dunkin’ brand (left) does not.<sup>4</sup>



Nutrition Facts	
32 serving(s) per container	
Serving Size	1 Tablespoon (15ml)
Amount Per Serving	
Calories	
	30
	% Daily Value
Total Fat 3g	4%
Saturated Fat 2g	9%
Trans Fat 0g	

<sup>4</sup> <https://smartlabel.syndigo.com/upc/00041415007635#nutrition>

39. The Dunkin’ “coffee creamer” contains 1.5g fat per 15 mL serving, while the Publix coffee creamer contains twice this amount.

40. According to databases of nutritional values, 15 mL of coffee cream at 18% milkfat will have about 2.5g of fat.<sup>5</sup>

41. This means the Publix coffee creamer, with 3g fat per 15 mL, slightly exceeds 18% milkfat, while Defendant’s Product appears to contain roughly 10% milkfat, far below the standard for coffee cream.

42. Second, “[the Product] [fails to] conforms to such definition and standard” even though it purports to be “the food specified in the definition and standard.” 21 U.S.C. § 343(g); Fla. Stat. § 500.11(1)(g).

43. While “coffee creamer” is two letters different than the standardized term of “coffee cream,” because consumers use such terms interchangeably and are almost identical, they will believe a product labeled as “coffee creamer,” described as “made with real cream,” is the food known as “coffee cream.”

44. Several years ago, the FDA warned a company that described its product as “Just Mayo,” but which lacked the ingredients of eggs that were required by the standard of identity for mayonnaise.

45. The FDA concluded that because “mayo” was shorthand for how consumers referred to mayonnaise, the absence of the spelled out “mayonnaise” did

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<sup>5</sup> [https://www.fatsecret.com/calories-nutrition/scotsburn/coffee-cream-\(18%25-fat\)](https://www.fatsecret.com/calories-nutrition/scotsburn/coffee-cream-(18%25-fat))

not cause consumers to be any less misled, because they would reasonably expect it to contain the customary ingredients for this food, such as eggs, even though it did not contain any eggs.

46. The Product is “misbranded” and misleads consumers because despite purporting to be a food subject to a standard of identity, “coffee creamer,” indicated on its front label, this is not its “common or usual name.” 21 U.S.C. § 343(i)(1); Fla. Stat. § 500.11(1)(i); 21 C.F.R. § 101.3(a).

47. The Product’s name, “Coffee Creamer,” to describe a product with less than 18% milkfat, is not a name required by law or regulation. 21 C.F.R. § 101.3(b)(1).

48. The name “Coffee Creamer” to describe a product with less than 18% milkfat is not the Product’s “common or usual name,” because it does not “accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients.” 21 C.F.R. § 101.3(b)(2); 21 C.F.R. § 102.5(a).

49. This is because its main, predominant and/or exclusive dairy ingredient is not cream, but the opposite of cream, nonfat or skim milk.

50. “Coffee Creamer” is not the Product’s common or usual name because it has about half the milkfat content of coffee cream, and the fat content is the most significant feature of dairy products added to coffee.

51. The name “Coffee Creamer” to describe a product with less than 18% milkfat is not “An appropriately descriptive term.” 21 C.F.R. § 101.3(b)(3).

52. The Product’s name of “coffee creamer” is not “uniform among all identical or similar products and [is] confusingly similar to the name of any other food that is not reasonably encompassed within the same name.” 21 C.F.R. § 102.5(a).

53. For example, the Dunkin’ Coffee Creamer, with a milkfat content of about 10%, is “confusingly similar to the name of [] other food[s] that [are] not reasonably encompassed within the same name,” which includes products such as the Publix Coffee Creamer, which contain between 18 and 30% milkfat.



54. The Product's name of Coffee Creamer does not "state[s], in clear terms, what it is in a way that distinguishes it from different foods," such as products like Publix Coffee Creamer, which contain between 18 and 30% milkfat. 21 C.F.R. § 102.5(a).

## **V. CONCLUSION**

55. The statements of "Coffee Creamer," described as "Made With Real Cream & Sugar," adjacent to a thick, white liquid being added to hot coffee, tells purchasers they are buying a product based on cream, with a high fat content, instead of skim milk, with no fat.

56. Skim or nonfat milk costs less than cream.

57. By adding skim milk, consumers get less of the cream promised from the front label.

58. As a result of the false and misleading representations, the Product is sold at a premium price, at or around \$5.39 for 32 oz (946 mL), excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

## **JURISDICTION**

59. Jurisdiction is based on the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. § 1332(d)(2).

60. The aggregate amount in controversy exceeds \$5 million, including any

statutory or punitive damages, exclusive of interest and costs.

61. Plaintiff is a citizen of Florida.

62. The membership of Danone US LLC consists of Danone North America Public Benefit Corporation (“DNAPBC”).

63. DNAPBC is a citizen of Delaware based on its corporate formation.

64. DNAPBC is a citizen of New York based on its principal place of business.

65. Defendant is a citizen of Delaware and New York based on the citizenship of DNAPBC.

66. The class of persons Plaintiff seeks to represent includes persons who are citizens of a different state from which Defendant is a citizen.

67. The members of the proposed class Plaintiff seeks to represent are more than one hundred, because the Product has been sold at grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores and/or online in this State and online to citizens of this State.

68. The Court has jurisdiction over Defendant because it transacts business within Florida and sells the Product to consumers within Florida from grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores and/or online in this State and online to citizens of this State.

69. Defendant transacts business in Florida, through the sale of the Product to citizens of Florida from grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores and/or online in this State and online to citizens of this State.

70. Defendant has committed tortious acts within this State through the distribution and sale of the Product, which is misleading to consumers in this State.

71. Defendant has committed tortious acts outside this State by labeling, representing and selling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, amount and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of conduct to sell the Product to consumers in this State, and/or derives substantial revenue from the sale of the Product in this State.

72. Defendant has committed tortious acts outside this State by labeling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, amount and/or quality, through causing the Product to be distributed throughout this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

### **VENUE**

73. Venue is in this District with assignment to the Fort Pierce Division

because a substantial or the entire part of the events or omissions giving rise to these claims occurred in Indian River County, which is where Plaintiff's causes of action accrued.

74. Plaintiff purchased, used and/or consumed the Product in reliance on the labeling identified here in Indian River County.

75. Plaintiff first became aware the labeling was false and misleading in Indian River County.

76. Plaintiff resides in Indian River County.

### **PARTIES**

77. Plaintiff Andrea Fahey is a citizen of Indian River County, Florida.

78. Defendant Danone US LLC is a Delaware limited liability company.

79. The member of Defendant is DNAPBC.

80. DNAPBC is one of the world's largest producer of dairy products, under a variety of brands.

81. Plaintiff is like most consumers who adds dairy products to coffee and/or other similar beverages, valuing how it affects its taste, texture and palatability.

82. Plaintiff is like most consumers who prefers to add dairy products to her coffee and/or other similar beverages, with a relatively higher fat and protein content compared to lower fat and protein content.

83. Plaintiff was familiar with how a product's name of "coffee cream"



referred to dairy products with relatively high fat and protein, because this is a commonly used term.

84. Plaintiff is like most consumers and looks to the front label of foods to see what she is buying and to learn basic information about them.

85. Plaintiff is like most consumers and is accustomed to the front label of packaging telling them if what they are buying contains an appreciable amount of the highlighted ingredients.

86. Plaintiff is like most consumers and when she sees that a front label tells him a product is “made with” specific ingredients, she will expect it contains more than a de minimis or negligible amount of such ingredients instead of other lower quality and value substitutes for such highlighted ingredients.

87. Plaintiff expected that the Product, labeled as “Coffee Creamer,” described as “Made With Real Cream,” next to a picture of a thick, white liquid being added to hot coffee, was the product generally known and understood as coffee cream.

88. Plaintiff expected the Product’s primary ingredient would be cream.

89. Plaintiff was not aware that the Product was not coffee cream and lacked the fat and protein content of coffee cream.

90. Plaintiff read, saw and relied on the label’s statements of “Coffee Creamer,” described as “Made With Real Cream,” with a picture of a thick dairy

substance being poured into a hot cup of coffee.

91. Plaintiff did not expect the Product contained a greater amount of the nonfat dairy ingredient of skim milk than dairy ingredients with fat, like cream.

92. Plaintiff did not expect that in addition to cream, the Product's main dairy ingredient would be skim or nonfat milk.

93. Plaintiff purchased the Product between January 2020 and January 2024, at grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores and/or online, in Indian River County, and/or other areas.

94. Plaintiff bought the Product at or exceeding the above-referenced price.

95. Plaintiff paid more for the Product than she would have had she known its predominant or exclusive dairy ingredient was not cream but nonfat or skim milk, as she would not have bought it or would have paid less.

96. The Product was worth less than what Plaintiff paid, and she would not have paid as much absent Defendant's false and misleading statements and omissions.

### **CLASS ALLEGATIONS**

97. Plaintiff seeks to represent the following class:

All persons in Florida who purchased the Product with the labeling identified here in Florida during the statutes of limitations for each cause of action alleged.

98. Excluded from the Class are (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediate family members of any of the foregoing persons, (b) governmental entities, (c) the Court, the Court's immediate family, and Court staff and (d) any person that timely and properly excludes himself or herself from the Class.

99. Common questions of issues, law, and fact predominate and include whether Defendant's representations were and are misleading and if Plaintiff and class members are entitled to damages.

100. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

101. Plaintiff is an adequate representative because her interests do not conflict with other members.

102. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

103. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

104. The class is sufficiently numerous and likely includes several thousand people.

105. This is because Defendant sells the Product to consumers through

hundreds of stores and online in the State Plaintiff is seeking to represent.

106. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

## **CAUSES OF ACTION**

### **COUNT I**

#### Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, et seq.

107. Plaintiff incorporates by reference paragraphs 1-58.

108. The purpose of FDUTPA is "To protect the consuming public...from those who engage in...deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202(2).

109. This includes "making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection." Fla. Stat. § 501.202(3).

110. FDUTPA considers any "unfair or deceptive acts or practices in the conduct of any trade or commerce [to be] unlawful." Fla. Stat. § 501.204(1).

111. Such "unfair or deceptive acts or practices" must be construed so that "due consideration and great weight shall be given to the interpretations of the FTC and the federal courts relating to [the FTC Act,] 15 U.S.C. § 45(a)(1)." Fla. Stat. § 501.204(2).

112. Violations of FDUTPA can be based on other laws and standards related

to consumer deception. Fla. Stat. § 501.203(3).

113. An FDUTPA violation occurs whenever “Any rules promulgated pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*” are violated. Fla. Stat. § 501.203(3)(a).

114. An FDUTPA violation occurs whenever “The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission (‘FTC’) or the federal courts” relating to the FTC Act are violated. Fla. Stat. § 501.203(3)(b).

115. An FDUTPA violation occurs whenever “Any law, statute, rule, regulation, or ordinance which proscribes...unfair, deceptive, or unconscionable acts or practices” is violated. Fla. Stat. § 501.203(3)(c).

116. In considering whether advertising is misleading in a material respect, the FTC Act recognizes that the effect of advertising includes not just representations made or suggested by words and images, “but also the extent to which [it] fails to reveal facts material in the light of such representations.” 15 U.S.C. § 55(a)(1).

117. In considering whether a food’s label is misleading, it is required to “take[] into account, among other things, not only representations made or suggested by statement, word, design, [] or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to

consumers.” Fla. Stat. § 500.03(2)(b).

118. Defendant’s false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

119. This is because consumers buying dairy products identified as “Coffee Creamer,” described as “Made With Real Cream,” adjacent to a thick, white liquid being added to hot coffee, will expect what they are buying is coffee cream and that it has a relatively high fat content, instead of having a relatively low-fat content, because a higher fat dairy ingredient of cream was replaced with a lower fat dairy ingredient of nonfat or skim milk.

120. The labeling of the Product violated the FTC Act and thereby violated FDUTPA because the representations and omissions of “Coffee Creamer,” described as “Made With Real Cream,” adjacent to a thick, white liquid being added to hot coffee, tells purchasers they are buying a product based on cream, with a high fat content, instead of skim milk, with no fat, created the erroneous impression it contained cream as its predominant dairy ingredient, when this was false, because it contained mostly ingredients other than this, such as nonfat milk and sugar. Fla. Stat. § 501.203(3)(a).

121. The labeling of the Product violates laws, statutes, rules and regulations “which proscribe[]...unfair, deceptive, or unconscionable acts or practices,” thereby violating FDUTPA. Fla. Stat. § 501.203(3)(c).

122. The labeling of the Product violated FDUTPA because the representations and omissions of “Coffee Creamer,” described as “Made With Real Cream,” adjacent to a thick, white liquid being added to hot coffee, when its predominant dairy ingredient was not cream but nonfat milk, was unfair and deceptive to consumers. Fla. Stat. § 501.204(1).

123. The labeling of the Product violated FDUTPA because the representations and omissions of “Coffee Creamer,” described as “Made With Real Cream,” adjacent to a thick, white liquid being added to hot coffee, when its predominant dairy ingredient was not cream but nonfat milk, was contrary to the Food Safety Act, which adopted the FFDCA and accompanying regulations.

124. The FFDCA and its regulations prohibit consumer deception by companies in the labeling of food. Fla. Stat. § 501.203(3)(c).

125. These include the following federal and state laws and regulations described above.

Federal	State
21 U.S.C. § 343(a)(1)	Fla. Stat. § 500.11(1)(a)
21 U.S.C. § 343(g)	Fla. Stat. § 500.11(1)(g)
21 U.S.C. § 343(i)	Fla. Stat. § 500.11(1)(i)
21 C.F.R. § 101.3	FL Admin Code § 5K-4.002(1)(d)
21 C.F.R. § 102.5(a)	FL Admin Code § 5K-4.002(1)(d)
21 C.F.R. § 131.3(a)	FL Admin Code § 5K-4.002(1)(d)

21 C.F.R. § 131.155(a) FL Admin Code § 5K-4.002(1)(d)

126. Plaintiff believed the Product contained cream as its main, predominant and/or exclusive dairy ingredient, even though its main dairy ingredient was nonfat skim milk.

127. Plaintiff seeks to recover for economic injury and/or loss she sustained based on the misleading labeling and packaging of the Product, a deceptive practice under FDUTPA, by paying more for it than she otherwise would have.

128. Plaintiff will produce evidence showing how she and consumers paid more than they otherwise would have paid for the Product, relying on Defendant's representations and omissions, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis and other advanced methodologies.

129. As a result of Defendant's misrepresentations and omissions, Plaintiff suffered damages in the price premium paid for the Product, which is the difference between what she paid for it and how much it would have been sold for without the false and misleading representations and omissions identified here.

## **COUNT II**

### False and Misleading Advertising.

#### Fla. Stat. § 817.41

130. Plaintiff incorporates by reference paragraphs 1-58.

131. Defendant made misrepresentations and omissions of material fact, by identifying and naming the Product "Coffee Creamer," described as "Made With



Real Cream,” adjacent to a thick, white liquid being added to hot coffee, when its predominant dairy ingredient was not cream but nonfat milk, through its advertisements and marketing in various forms of media, product packaging and descriptions, and/or targeted digital advertising.

132. Defendant failed to truthfully disclose that the Product did not contain cream as its predominant ingredient, but nonfat, skim milk, and was not the product type understood by Plaintiff and consumers as “coffee cream.”

133. Defendant falsely and/or deceptively stated and/or implied the Product contained cream as its predominant or exclusive dairy ingredient, even though its predominant dairy ingredient was nonfat skim milk, and it contained more sugar than cream.

134. Defendant’s false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions, since consumers buying products identified and named as “coffee creamer,” described as “Made With Real Cream,” adjacent to a thick, white liquid being added to hot coffee, are seeking dairy products with relatively high fat contents to add to coffee and/or other similar beverages, instead of dairy products with lower fat content.

135. Defendant knew its statements and omissions were false and/or misleading.

136. Defendant intended for consumers to rely on its false statements and

omissions for the purpose of selling the Product.

137. Plaintiff and class members did in fact rely upon these statements and omissions.

138. Reliance was reasonable and justified because of the public trust placed in foods sold under the Dunkin' Donuts brand, who expect them to be labeled accurately and in a non-misleading manner.

139. Plaintiff paid more for the Product, as she would not have paid as much or bought it if she knew that it did not contain cream as its predominant or exclusive dairy ingredient, because its predominant dairy ingredient was nonfat skim milk, and it contained more sugar than cream.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**WHEREFORE**, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Awarding monetary damages and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: February 9, 2024

Respectfully submitted,

/s/ William Wright

The Wright Law Office P.A.

515 N Flagler Dr Ste P300

West Palm Beach FL 33401

(561) 514-0904

willwright@wrightlawoffice.com

*Notice of Lead Counsel Designation:*

*Lead Counsel for Plaintiff*

William Wright

The Wright Law Office P.A.

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS ANDREA FAHEY, individually and on behalf of all others similarly situated, DANONE US LLC
(b) County of Residence of First Listed Plaintiff Indian River County of Residence of First Listed Defendant
(c) Attorneys (Firm Name, Address, and Telephone Number) The Wright Law Office, P.A., 515 N Flagler Dr Ste P300 West Palm Beach FL 33401-4326, (561) 514-0904
(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff 3 Federal Question
2 U.S. Government Defendant 4 Diversity
Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country
PTF DEF PTF DEF PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR SOCIAL SECURITY FEDERAL TAX SUITS
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Med. Malpractice
PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Injury Product Liability 385 Property Damage Product Liability
625 Drug Related Seizure of Property 21 USC 881 690 Other
422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
PROPERTY RIGHTS 820 Copyright 830 Patent 835 Patent - Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016
LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act
SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))
FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC 7609
375 False Claims Act 376 Qui Tam (31 USC 3729 (a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit (15 USC 1681 or 1692) 485 Telephone Consumer Protection Act (TCPA) 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision Constitutionality of
950 State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332; false advertising
LENGTH OF TRIAL via 14 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE February 9, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ William Wright

FOR OFFICE USE ONLY: RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

ANDREA FAHEY, individually and on behalf of
all others similarly situated,

Plaintiff(s)

v.

DANONE US LLC,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Danone US LLC
c/o Corporate Creations Network Inc.
1521 Concord Pike Ste 201
Wilmington DE 19803-3645

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

William Wright, The Wright Law Office, P.A., 515 N Flagler Dr Ste P300 West Palm Beach FL 33401-4326, (561) 514-0904

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: