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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 FREDERICK TAN, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 THE FOLGER COFFEE COMPANY, a  
19 subsidiary of the J. M. SMUCKER  
20 COMPANY,

21 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Frederick Tan (“Plaintiff” or “Tan”), on behalf of himself and all others  
2 similarly situated (the “Class Members”), brings this consumer class action  
3 complaint against defendant The Folger Coffee Company (“Defendant” or  
4 “Folgers”), for unlawful, unfair, and deceptive business practices. Plaintiff’s  
5 allegations are based on the investigation of counsel, and the findings of Plaintiff’s  
6 expert chemist, and are based on information and belief, except as to the  
7 allegations pertaining to Plaintiff individually, which are based on personal  
8 knowledge.

9 **NATURE OF THE ACTION**

10 1. Folgers coffee is a household name with sales comprising a significant  
11 portion of the \$7.8 billion in net revenues reported by corporate parent, The J.M.  
12 Smucker Company, during its last fiscal year. It is estimated that Folgers has  
13 nationwide sales of approximately \$1 billion. The coffee giant engages in false and  
14 deceptive package labeling on its brewed coffee containers with respect to the  
15 promised number of coffee servings contained in the package. Folgers  
16 misrepresents the number of servings its containers can provide in order to spur  
17 sales, and disadvantage competitors who do not make similar claims. As a result,  
18 consumers overpay, as they do not receive the number of coffee servings Folgers  
19 represents to be present in the container, to the detriment of the consumer. These  
20 types of consumer deceptions hit senior citizens and others on a limited budget  
21 hardest as they are led to believe they are getting a bargain when they are not.  
22 Short fill deception is meant to make comparison shopping difficult, if not  
23 impossible. Moreover, honest vendors—who do not resort to similar tactics—find  
24 themselves driven out of the market, or seriously disadvantaged.

25 2. In a practice that offends reasonable consumer expectations,  
26 Defendant affirmatively represents on the coffee can label the expected number of  
27 cups of coffee that the container can produce when the coffee is brewed according  
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1 to provided instructions, but this information is false because the can does not  
2 contain enough coffee to produce anywhere near the number of cups represented.  
3 Thus, the labeling on Folgers coffee product canisters (the “Folgers Coffee  
4 Products”)<sup>1</sup> prominently states that each canister will produce up to a certain  
5 number of six fluid ounce cups when, in fact, the coffee canisters at issue do not  
6 contain enough coffee to produce the volume of coffee cups represented if the  
7 given instructions are followed (the “Folgers Label Claims”). Plaintiff’s expert,  
8 based on an analysis of several Folgers varieties, has produced a chart that shows  
9 the true number of servings contained within each coffee canister. *See infra*, ¶ 25.  
10 Other varieties are similarly misrepresented.

11 3. Thus, the stated coffee cup yield information on the Folgers Coffee  
12 Products is deceptive and untrue. Plaintiff and the Class Members overpaid for the  
13 Folgers Coffee Products, as they did not receive (and could not receive) the  
14 represented amounts of servings and did not receive the “benefit of the bargain”  
15 when purchasing Folgers Coffee Products. For example, one of the canisters  
16 similar to those Plaintiff purchased, Folgers Classic Decaf, was advertised on  
17 Walmart.com on October 10, 2020 at \$9.53 for 240 servings, which is roughly 4  
18 cents per serving. But those who buy this product, which yields only about 181  
19 suggested strength servings, are paying roughly 5.3 cents per serving. Adjusted, the  
20 price should be only about \$7.24, \$2.29 or roughly 24% less. By overpaying in this  
21 manner and failing to receive the benefit of the bargain, Plaintiff and the Class  
22 Members suffered monetary injury.

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25 \_\_\_\_\_  
26 <sup>1</sup> The “Folgers Coffee Products” include the Folgers Classic Roast and Classic Roast Decaf  
27 purchased by Plaintiff, as well as the ½ Caff, CoffeeHouse Blend, Country Roast, Simply  
28 Smooth, Simply Smooth Decaf, 100% Colombian, Black Silk, Black Silk Decaf, Brazilian  
Blend, Breakfast Blend, French Roast, Gourmet Supreme, House Blend and Special Roast.

1 **JURISDICTION AND VENUE**

2 4. This Court has subject matter jurisdiction pursuant to the Class Action  
3 Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more  
4 than 100 Class Members; (2) Plaintiff is a citizen of California; Defendant is a  
5 citizen of the State of Ohio; and (3) the amount in controversy exceeds the sum of  
6 \$5,000,000.00, exclusive of interests and costs.

7 5. The Court has personal jurisdiction over Defendant because it  
8 conducts substantial business in California. Defendant has and continues to  
9 actively market, promote, and sell the Folgers Coffee Products in California  
10 through numerous retailers and online channels, and Defendant has sufficient  
11 minimum contacts with this State and/or has sufficiently availed itself of the  
12 market in this State through its marketing, promotion and sales within this State,  
13 including sales in the Albertson's, Smart & Final, Vons and Ralph's grocery  
14 chains, to render the exercise of jurisdiction by this Court permissible.

15 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2)  
16 because a substantial part of the events or omissions giving rise to Plaintiff's  
17 claims occurred while Plaintiff resided in this judicial district.

18 **PARTIES**

19 7. Plaintiff Frederick Tan resides in Los Angeles County, California.  
20 During at least the past four years, Plaintiff purchased two Folgers product  
21 varieties: Folgers Classic Roast and Folgers Classic Decaf in local markets,  
22 including Albertson's, Smart & Final, Vons and Ralph's, containing the  
23 misrepresentations that are the subject of this suit. Plaintiff has used the coffee but  
24 has retained canisters of each type that have not been completely consumed.  
25 Plaintiff was injured in that he overpaid for the Folgers products purchased, in that  
26 he did not receive the amount of coffee represented to be made on the label.  
27 Indeed, Class Members continue to purchase these and similar products,  
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1 reasonably but incorrectly believing that they contain enough coffee to make the  
2 advertised number of servings. The Folgers Label Claims made on the products  
3 Plaintiff purchased and on all other varieties of Folgers ground coffee would  
4 deceive an objectively reasonable consumer.

5 8. Defendant is a corporation organized and existing under the laws of  
6 the State of Ohio, with its headquarters and principal place of business at One  
7 Strawberry Lane, Orrville, OH 44667. Folgers is arguably the most well-known  
8 coffee maker/brand in the United States. The coffee giant excels in offering a wide  
9 range of products to customers, including varying flavors, roasts and strengths of  
10 coffee. Since the early 1990s, it has been the largest-selling brand of ground coffee  
11 in the United States. In the 1980s, Folgers' slogan "The best part of waking up is  
12 Folgers in your cup!" and the well-associated jingle became recognizable in  
13 households across the country, along with the Folgers name. Folgers generates an  
14 estimated \$1 billion or more in sales each year, a significant portion of which is  
15 derived from sales of the Folgers Coffee Products in California. In 2008, Folgers  
16 was acquired by J.M. Smucker from Procter & Gamble for a reported \$3 billion.

17 **FACTUAL ALLEGATIONS**

18 9. Defendant sells the Folgers Coffee Products to consumers based on  
19 the representation on the front label that the container contains enough ground  
20 coffee to make a specific number of servings. However, when following  
21 Defendant's own instructions, the Folgers Coffee Products do not contain enough  
22 ground coffee to make the number of servings represented by Defendant, whether  
23 by number of tablespoons or by weight. Defendant places a materially identical  
24 representation on the front label of most, if not all, of the Folger Coffee Products,  
25 although the number of represented servings varies based on the size of the  
26 container.

**FOLGERS CLASSIC ROAST**

10. According to Plaintiff’s expert, Folgers is short-changing its customers by a significant amount (*See infra*, ¶ 22). In Plaintiff’s case, for example, a coffee canister he purchased, Folgers Classic Roast, prominently states on the front label that it “MAKES UP TO 240 6 FL OZ CUPS.” According to this canister, it contains 865 grams. Instructions on the back panel of the canister direct consumers to use the following measurements: “Cold Water: 1 Serving (6 fl. oz)” with “Folgers Coffee: 1 Tablespoon” which yields “1 Serving (6 fl. oz.)”. This would lead the reasonable consumer to believe that this recipe produces coffee of “suggested strength,” and therefore the same consumer would then expect to be able to produce 240 cups of equally strong coffee, obtained using the same recipe, *i.e.* the canister should contain 240 tablespoons of ground coffee.

11. However, if the back-panel instructions are followed, the canister only produces approximately 170 six fluid-ounce-servings, 70 cups short of what Folgers represents on its front panel.

12. As an alternative, the back label states that to brew 10 servings, add 10 servings of cold water (6 oz. each) and ½ measuring cup of Folgers coffee. However, ½ measuring cup is actually 8 tablespoons, a fact not commonly known to the general public. This alternative brew method for a canister that holds 865 grams produces approximately 210 standard servings of *diluted* coffee, not the 240 cups prominently advertised on the front of the canister. Thus, even if one were to assume that every pot of coffee made from the canister was based on a 10 servings recipe, the amount of coffee in the Classic Roast still falls short of the representation as to the number of cups which could be made from the canister, and the cups that would be made would be weak and diluted.

13. The same shortfall is evident in other Folgers Classic Roast canisters. Indeed, another Folgers Classic Roast canister purports to produce up to 380 six

1 fluid ounce cups, stating on the front label: “MAKES UP TO 380 6 FL OZ CUPS.”  
2 The canister contains 1360 grams of coffee. A consumer following the instructions  
3 on the label of the Folgers Classic Roast canister is directed to utilize one  
4 tablespoon of Folgers coffee to yield one six fluid ounce serving and would expect  
5 the canister to produce 380 cups of the “suggested strength” coffee. But the  
6 canister only produces approximately 267 six fluid ounce servings, 113 cups short  
7 of what Folgers represents the canister contains. Following the 10 serving recipe  
8 likewise produces far less than the 380 six fluid ounce cups – yielding just 334  
9 standard, but *diluted*, servings.

#### 10 **FOLGERS CLASSIC DECAF**

11 14. The Folgers Classic Decaf canister purchased by Plaintiff prominently  
12 states on the front label that it “MAKES UP TO 240 6 FL OZ CUPS.” According  
13 to this canister, it contains 865 grams. Instructions on the back panel of the canister  
14 direct consumers to use the following measurements: “Cold Water: 1 Serving (6 fl.  
15 oz)” with “Folgers Coffee: 1 Tablespoon” which yields “1 Serving (6 fl. oz.)”. This  
16 means that each Classic Decaf canister should contain 240 tablespoons of coffee to  
17 satisfy the representation on the front label. A reasonable consumer would follow  
18 the measurements supplied by the manufacturer to obtain the best results—*i.e.*, the  
19 “suggested strength.”

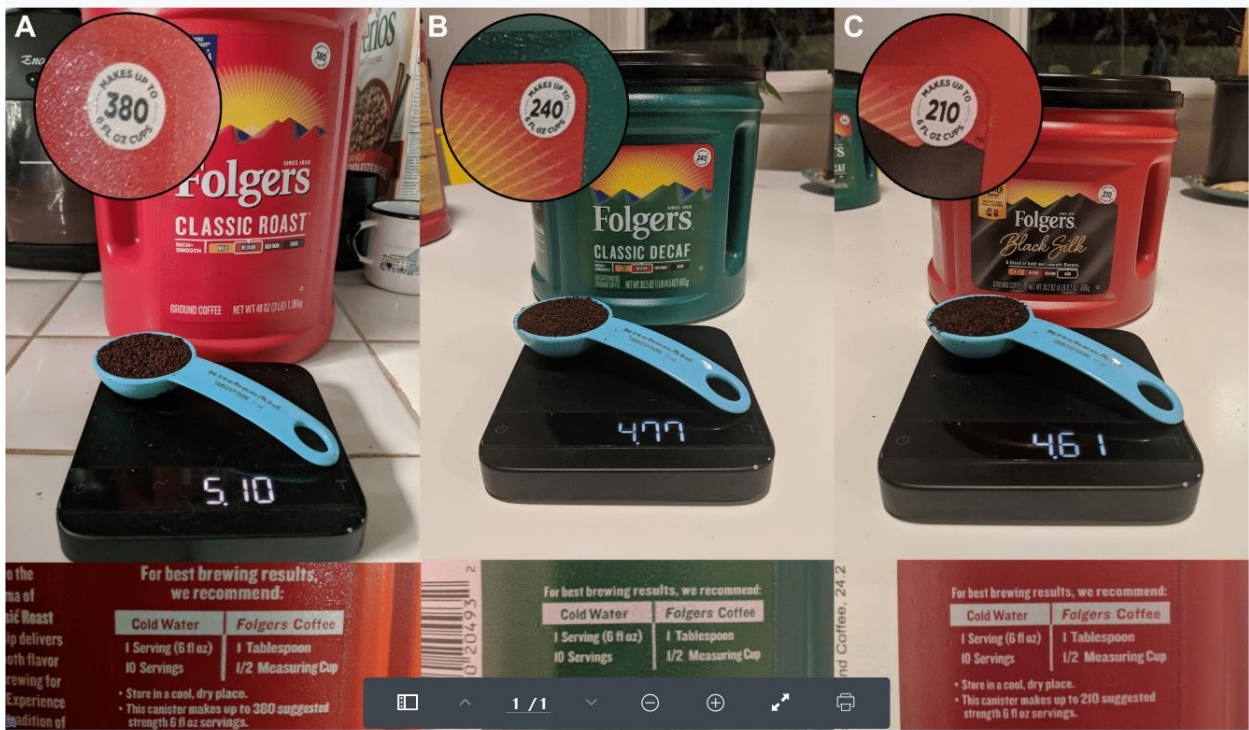
20 15. However, if the back-panel instructions are followed, the canister only  
21 produces approximately 181 six fluid-ounce-servings, 59 cups short of what  
22 Folgers represents on its front panel.

23 16. The alternative 10 serving recipe for coffee suggested by Folgers, in a  
24 canister that holds 865 grams, produces only 227 cups of *diluted* coffee, not the  
25 240 cups advertised on the front of the canister. Thus, even if one were to assume  
26 that every pot of coffee made from the canister was based on a 10 servings pot, the  
27 amount of coffee in the Classic Decaf canister still falls short of the representation  
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as to the number of cups which could be made from the canister, and the cups that would be made would be weak and diluted.

**MEASUREMENT BY WEIGHT**

17. Moreover, even if one were to follow the instructions based on weight, the Folger Coffee Products still fall short of what is represented. The weight of 1 tablespoon of coffee varies by variety.<sup>2</sup> Plaintiff’s expert examined a sampling of Folgers Coffee Products, including the varieties purchased by Plaintiff, and discerned the following gram weights per tablespoon illustrated below. Based on these gram weights, the canisters simply do not contain enough coffee to produce the promised number of cups at the suggested strength. (See Chart, *infra* ¶ 22):



<sup>2</sup> <https://espressocoffeeuide.com/how-much-coffee-per-cup/> (noting that 2 tablespoons is 10.6 grams); <https://www.backyardbeans.com/blog/2017/11/1/how-much-coffee-should-i-use> (“1 level tablespoon of beans or grounds is about 5 grams.”).



1           18. In each of the Folgers Coffee Products reviewed by the expert, the  
2 front panel prominently and conspicuously states the number of cups the canister  
3 will produce, as shown above and in the Classic Decaf and Classic Roast canisters  
4 illustrated below and taken from commercial websites to ensure the quality of the  
5 photograph but an accurate replica of one which Plaintiff purchased:



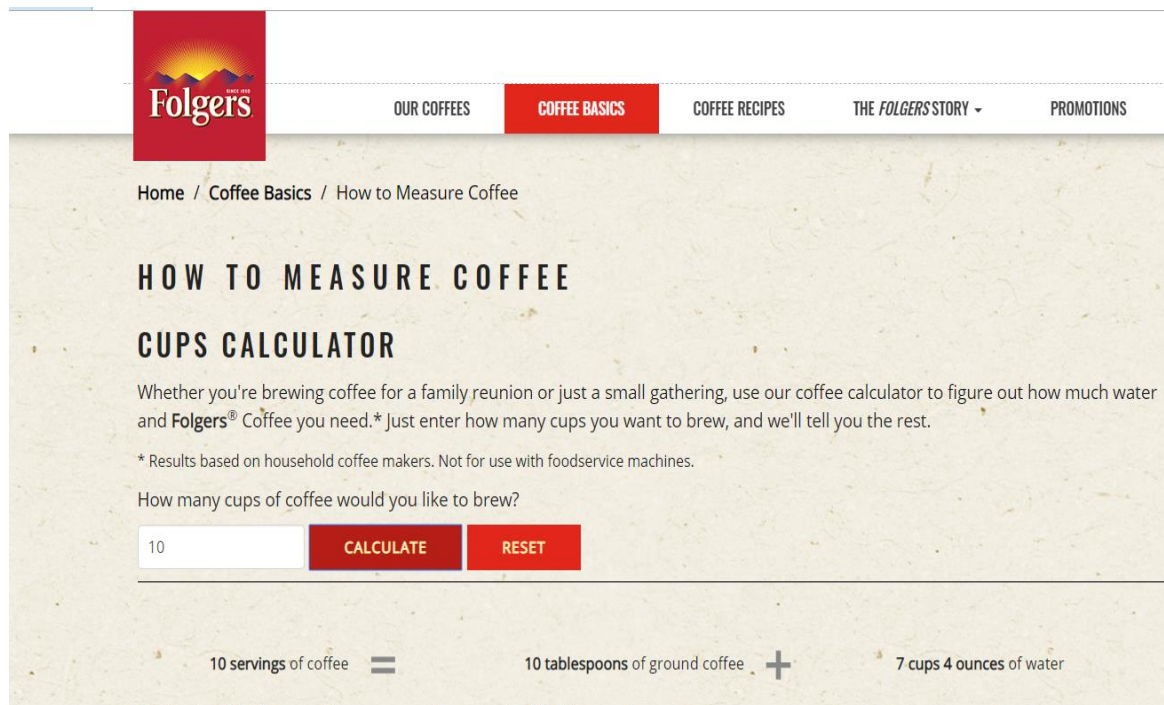
19. The back panel of each relevant Folgers product contains the information with respect to a “serving” as illustrated:

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20. Until consumer complaints were filed in recent months, Folgers represented to consumers that 1 tablespoon of coffee was necessary to achieve one suggested strength cup of coffee on its own website. There, one found a calculator which advised customers how much coffee to use per cup. If one asked how to make 10 cups, the calculator advised to use **10 tablespoons** of Folgers Coffee:<sup>3</sup>

<sup>3</sup> Screenshot was taken Sept. 9, 2020 from <https://www.folgerscoffee.com/coffee-how-to/how-to-measure-coffee>. This instruction has now been deleted without explanation.



### EXPERT ANALYSIS

15           21. As noted, Plaintiff retained an expert to test Folgers’ claims. The  
16 expert is a Ph.D. chemist with experience in the coffee industry, and with  
17 appropriate training in mathematical measurements and testing. The expert  
18 personally brewed the varieties of coffee purchased by Plaintiff as well as the  
19 Folgers Black Silk variety. In making his assessment, he took into account  
20 standard scientific measurements applied to brewing coffee, such as extraction  
21 yield (“EY”) and total dissolved solids (“TDS”), measured using an industry  
22 standard refractive index measurement. He calculated the exact gram weight per  
23 tablespoon for each variety. The expert also considered Folgers’ assertion that:  
24 “The general rule is to add 1 level tablespoon of ground coffee per cup. For  
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1 example, 6 tablespoons of ground coffee would be recommended for making 6  
2 cups.”<sup>4</sup>

3 22. The expert’s conclusion is that the Folgers canister claims are false.  
4 Having personally brewed the coffee according to Folgers’ instructions, verified  
5 the results and made scientific calculations, his findings are as follows as to the  
6 three varieties:

Product	Canister mass (g)	Advertised cup limit (6 fl oz cups)	Mass of level tablespoon (g +/- 0.1 g)	Number of 6 fl oz cups attainable brewed using single serving recipe	Number of 6 fl oz cups attainable brewed using ten serving recipe	% Underfill for single serving recipe	% Underfill for ten serving recipe
Classic Roast	1360	380	5.09	267	334	29.7	12.1
Classic Decaf	865	240	4.77	181	227	24.4	5.6
Black Silk	686	210	4.61	149	186	29.1	11.4

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12 23. While the expert specifically utilized a 1360 gram canister of the  
13 Folgers Classic Roast in his analysis, the same methodology provides the coffee  
14 yield for the 865 gram canister of Folgers Classic Roast purchased by Plaintiff.  
15 This canister promises 240 servings, but merely yields approximately 170 single  
16 six fluid ounce cups or 212, *diluted*, six fluid ounce cups using the ten serving  
17 recipe. Thus, the 865 gram canister of Folgers Classic Roast has a 29.2 % underfill  
18 based on the single serving recipe or a 11.7% underfill for the ten serving recipe.

19 24. Folgers has previously acknowledged that its coffee yield per canister  
20 is not accurate. In a website, *Truthinadvertising.com*, the editors doubted the ability  
21 of a Folgers’ canister to produce the number of cups as advertised. Folgers  
22 responded, noting that it suggests using *1-2 tablespoons* of ground coffee for every  
23 6 fl. ounces of water based on personal preference, which would have an impact on  
24 the number of cups a canister will yield. Folgers then indicated that a 30.5 oz.

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26 <sup>4</sup> <https://www.folgerscoffee.com/frequently-asked-questions>, Question 3: “What Is The Best  
27 Way to Brew Ground and Whole Bean Coffee?” (last accessed Sept. 9, 2020).

1 container, without reference to the type of coffee, “should yield about 215-240  
2 cups per canister.” (<https://www.truthinadvertising.org/folgers/>). However, this  
3 information is not widely known or disseminated, and is contrary to the  
4 representations that Folgers continues to make on the front of the canisters.

### 5 **CONSUMER CONFIRMATION**

6 25. Recent publicity concerning this issue has brought forth thousands of  
7 comments on websites from dissatisfied Folgers consumers. For example:

- 8 • Karen A. stated: “Please add me [to a consumer action]...the last  
9 container I bought said up to 270 cups and that was not true.”
- 10 • Erika D. reported: “I also had this problem [of underfill] but I  
11 would just shrug it off because it’s my favorite brand of coffee.”
- 12 • Theresa said: “Please add me. I buy Folgers all the time and I  
13 never realized why my coffee never lasted as long as it should  
14 have.”
- 15 • Victoria S. complained: “I drink Folgers coffee every day. I knew I  
16 was getting short changed.”
- 17 • Celeste F. observed: “I have purchased 5 of these containers and  
18 they go too fast for the [amount] stated in them.”<sup>5</sup>

### 19 **FOLGERS’ FALSE LABELING HARMS CONSUMERS**

20 26. The Folgers Label Claims are objectively deceptive and, as alleged  
21 herein, violate the California Consumers Legal Remedies Act, Cal. Civ. Code §  
22 1750, *et seq.* and California’s False Advertising Law, Cal. Bus. & Prof. Code §  
23 17500, *et seq.*, and constitute breaches of express and implied warranty, intentional  
24 and negligent misrepresentation and unjust enrichment.

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26 <sup>5</sup> All quotes from [https://topclassactions.com/lawsuit-settlements/consumer-](https://topclassactions.com/lawsuit-settlements/consumer-products/beverages/folgers-class-action-says-coffee-servings-are-inflated/)  
27 [products/beverages/folgers-class-action-says-coffee-servings-are-inflated/](https://topclassactions.com/lawsuit-settlements/consumer-products/beverages/folgers-class-action-says-coffee-servings-are-inflated/) (last accessed Sept. 9,  
28 2020).

1 27. Throughout the Class Period defined below, Defendant has engaged  
2 in, and continues to engage in, the Folgers Label Claims. As a result, Defendant  
3 has sold thousands, if not millions, of Folgers Coffee Products to unsuspecting  
4 consumers across United States and California through its retailers and online sales  
5 channels during the Class Period.

6 28. Defendant's Folgers Label Claims are false as discussed above, based  
7 on the fact that the Folgers Coffee Products are represented as having  
8 characteristics that they, in fact, do not have.

9 29. Defendant's Folgers Label Claims are material since this practice was  
10 likely to deceive Plaintiff and the Class Members acting reasonably in the same  
11 circumstances.

12 30. Plaintiff and the Class Members suffered injury in fact and lost money  
13 as a result of Defendant's deceptive practices in that they: (1) paid more for a  
14 Coffee Product that was not as represented; (2) were deprived of the benefit of the  
15 bargain because the Folgers Coffee Products they purchased were materially  
16 different than what Defendant had stated on the label; and (3) were deprived of the  
17 benefit of the bargain because the Folgers Coffee Products they purchased had less  
18 value than what Defendant represented.

19 **CLASS ALLEGATIONS**

20 31. Plaintiff repeats and re-alleges the allegations contained in every  
21 preceding paragraph as if fully set forth herein.

22 32. Plaintiff brings this action on behalf of himself and all other similarly  
23 situated Class Members pursuant to Rule 23 of the Federal Rules of Civil  
24 Procedure and seeks certification of the following Classes:  
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1           Nationwide Class

2           All persons who purchased any of the Folgers Coffee  
3           Products in the United States within the applicable statute  
4           of limitations period.

5           California Subclass

6           All persons who purchased any of the Folgers Coffee  
7           Products in the State of California within the applicable  
8           statute of limitations period.

9           33.   Excluded from the Classes are Defendant and its parents, subsidiaries,  
10          affiliates, officers and directors, current or former employees, and any entity in  
11          which Defendant has a controlling interest as well as all individuals who make a  
12          timely election to be excluded from this proceeding using the correct protocol for  
13          opting out and all judges assigned to hear any aspect of this litigation, as well as  
14          their immediate family members.

15          34.   Plaintiff is a member of the Nationwide Class and the California  
16          Subclass.

17          35.   Numerosity: The members of the Classes are so numerous that joinder  
18          of all members is impracticable. Plaintiff is informed and believes that the  
19          proposed Classes contain hundreds or even thousands of individuals who have  
20          been damaged by Defendant's conduct as alleged herein. The precise number of  
21          Class Members is unknown to Plaintiff but may be determined with reasonable  
22          accuracy through class discovery.

23          36.   Existence and Predominance of Common Questions of Law and Fact:  
24          This action involves common questions of law and fact, which predominate over  
25          any questions affecting individual Class Members. These common legal and  
26          factual questions include, but are not limited to, the following:  
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1 a. Whether Defendant made false and/or misleading statements to  
2 the Class, the Subclass and the public concerning the cup yield in the Folgers  
3 Coffee Products;

4 b. Whether Defendant omitted material information to the public  
5 concerning the actual cup yield of the Folgers Coffee Products;

6 c. Whether Defendant's packaging for the Folgers Coffee  
7 Products is misleading and deceptive;

8 d. Whether the container label on the Folgers Coffee Products is  
9 misleading and deceptive;

10 e. Whether Defendant's conduct violates the law; and

11 f. Whether Plaintiff and the Class Members have been damaged  
12 and if so the proper calculation of damages.

13 37. Typicality: Plaintiff's claims are typical of the claims of the Class  
14 Members because, *inter alia*, all Class and Subclass Members have been impacted  
15 in the same way by Defendant's false and misleading label claims about the  
16 serving yield of its Folgers Coffee Products. Plaintiff is advancing the same claims  
17 and legal theories on behalf of himself and all members of the Class and Subclass.

18 38. Adequacy: Plaintiff will fairly and adequately protect the interests of  
19 the Class and Subclass. Plaintiff has retained counsel experienced in complex  
20 consumer class action litigation, and Plaintiff intends to prosecute this action  
21 vigorously. Plaintiff has no antagonistic or adverse interest to those of the Class  
22 and Subclass.

23 39. Superiority: The nature of this action and the nature of the laws  
24 available to Plaintiff and the Class and the Subclass make the use of the class  
25 action format a particularly efficient and appropriate procedure to afford relief to  
26 him and the Class and the Subclass for the wrongs alleged. The damages or other  
27 financial detriment suffered by individual members of the Class and Subclass are



1 miniscule compared to the burden and expense that would be entailed by  
2 individual litigation of their claims against Defendant. It would thus be virtually  
3 impossible for Plaintiff and the members of the Class and Subclass, on an  
4 individual basis, to obtain effective redress for the wrongs done to them. Absent  
5 the class action, members of the Class and Subclass would not likely recover, or  
6 would not likely have the chance to recover, damages and/or restitution from  
7 Defendant, which would continue to retain the proceeds of its wrongful conduct.

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of California’s Consumers Legal Remedies Act,  
10 California Civil Code § 1750, *et seq.*  
11 (*for the California Subclass*)**

12 40. Plaintiff realleges and incorporates by reference the allegations  
13 previously asserted above.

14 41. Plaintiff brings this claim individually and on behalf of the members  
15 of the proposed California Subclass against Defendant pursuant to California’s  
16 Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*

17 42. The Folgers Coffee Products are “goods” within the meaning of Cal.  
18 Civ. Code § 1761(a), Defendant is a “person” within the meaning of Cal. Civ.  
19 Code § 1761(c), and the purchases of such Folgers Coffee Products by Plaintiff  
20 and members of the California Subclass constitute “transactions” within the  
21 meaning of Cal. Civ. Code § 1761(e).

22 43. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
23 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
24 quantities which they do not have . . . .” By marketing the Folgers Coffee Products  
25 with their current packaging, Defendant has represented and continues to represent  
26 that the Folgers Coffee Products have characteristics (*i.e.*, contain enough ground  
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1 coffee to make up to a specified number of servings) that they do not have.  
2 Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

3 44. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or  
4 services are of a particular standard, quality, or grade, or that goods are of a  
5 particular style or model, if they are of another.” By marketing the Folgers Coffee  
6 Products with their current packaging, Defendant has represented and continues to  
7 represent that the Folgers Coffee Products are of a particular standard (*i.e.*, contain  
8 enough ground coffee to make up to a certain number of servings) which they do  
9 not possess. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

10 45. Cal. Civ. Code §1770(a)(9) prohibits “[a]dvertising goods or services  
11 with intent not to sell them as advertised.” By marketing the Folgers Coffee  
12 Products as containing enough ground coffee to make a specified number of  
13 servings, but not intending to sell the Folgers Coffee Products as such, Defendant  
14 has violated section 1770(a)(9) of the CLRA.

15 46. At all relevant times, Defendant has known or reasonably should have  
16 known that the Folgers Coffee Products did not contain enough ground coffee to  
17 make the represented number of servings, and that Plaintiff and other members of  
18 the California Subclass would reasonably and justifiably rely on the packaging in  
19 purchasing the Folgers Coffee Products.

20 47. Plaintiff and members of the California Subclass have justifiably  
21 relied on Defendant’s misleading representations when purchasing the Folgers  
22 Coffee Products. Moreover, based on the materiality of Defendant’s misleading  
23 and deceptive conduct, reliance may be presumed or inferred for Plaintiff and  
24 members of the California Subclass.

25 48. Plaintiff and members of the California Subclass have suffered and  
26 continue to suffer injuries caused by Defendant because they would have paid  
27 significantly less for the Folgers Coffee Products, or would not have purchased  
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1 them at all, had they known that the Folgers Coffee Products contain substantially  
2 less ground coffee to make the promised number of servings.

3 49. An objectively reasonable consumer would have been deceived by the  
4 Folgers Label Claims, as they are inaccurate and misleading. Defendant’s practices  
5 are unfair and deceptive. Thus, Plaintiff requests that this Court enjoin Defendant  
6 from continuing to violate the CLRA as discussed herein and/or from violating the  
7 CLRA in the future.

8 **SECOND CLAIM FOR RELIEF**

9 **Violation of California’s False Advertising Law,  
10 California Business & Professions Code § 17500, *et seq.*  
11 *(for the California Subclass)***

12 50. Plaintiff realleges and incorporates by reference the allegations  
13 previously asserted above.

14 51. Plaintiff brings this claim individually and on behalf of the members  
15 of the proposed California Subclass against Defendant pursuant to California’s  
16 False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*

17 52. The FAL makes it “unlawful for any person to make or disseminate or  
18 cause to be made or disseminated before the public . . . in any advertising device . .  
19 . or in any other manner or means whatever, including over the Internet, any  
20 statement, concerning . . . personal property or services professional or otherwise,  
21 or performance or disposition thereof, which is untrue or misleading and which is  
22 known, or which by the exercise of reasonable care should be known, to be untrue  
23 or misleading.” Cal. Bus. & Prof. Code § 17500.

24 53. Defendant has represented and continues to represent to the public,  
25 including Plaintiff and members of the Subclass, through its deceptive packaging,  
26 that the Folgers Coffee Products contain enough ground coffee to make  
27 substantially more servings than they can actually make. Because Defendant has

1 disseminated misleading information regarding the Folgers Coffee Products, and  
2 Defendant knows, knew, or should have known through the exercise of reasonable  
3 care that the representations were and continue to be misleading, Defendant has  
4 violated the FAL.

5 54. As a result of Defendant's false advertising, Defendant has and  
6 continues to unlawfully obtain money from Plaintiff and members of the Subclass.

7 55. Plaintiff requests that this Court cause Defendant to restore this  
8 fraudulently obtained money to them and members of the Subclass, to disgorge the  
9 profits Defendant made on these transactions, and to enjoin Defendant from  
10 violating the FAL or violating it in the same fashion in the future as discussed  
11 herein. Otherwise, Plaintiff and members the California Subclass may be  
12 irreparably harmed and/or denied an effective and complete remedy if such an  
13 order is not granted.

14 **THIRD CLAIM FOR RELIEF**

15 **Violation of California's Unfair Competition Law ("UCL"),**  
16 **California Business & Professions Code § 17200, *et seq.***  
17 ***(for the California Subclass)***

18 56. Plaintiff realleges and incorporates by reference the allegations  
19 previously asserted above.

20 57. Plaintiff brings this claim individually and on behalf of the members  
21 of the proposed California Subclass against Defendant.

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

25 59. Under the UCL, a business act or practice is "unlawful" if it violates  
26 any established state or federal law. Defendant's false and misleading advertising  
27 of the Folgers Coffee Products was and continues to be "unlawful" because it  
28

1 violates the CLRA, the FAL, and other applicable laws as described herein. As a  
2 result of Defendant's unlawful business acts and practices, Defendant has  
3 unlawfully obtained money from Plaintiff and members of the California Subclass.

4 60. Under the UCL, a business act or practice is "unfair" if the  
5 Defendant's conduct is substantially injurious to consumers, offends public policy,  
6 and is immoral, unethical, oppressive, and unscrupulous, as the benefits for  
7 committing such acts or practices are outweighed by the gravity of the harm to the  
8 alleged victims. Defendant's conduct was and continues to be of no benefit to  
9 purchasers of the Products, as it is misleading, unfair, unlawful, and is injurious to  
10 consumers who rely on the packaging. Deceiving consumers as to how many cups  
11 of coffee the Products can make is of no benefit to consumers. Therefore,  
12 Defendant's conduct was and continues to be "unfair." As a result of Defendant's  
13 unfair business acts and practices, Defendant has and continues to unfairly obtain  
14 money from Plaintiff and members of the California Subclass.

15 61. Under the UCL, a business act or practice is "fraudulent" if it actually  
16 deceives or is likely to deceive members of the consuming public. Defendant's  
17 conduct here was and continues to be fraudulent because it has the effect of  
18 deceiving consumers into believing that the Folgers Coffee Products contain  
19 enough ground coffee to make substantially more servings than they can actually  
20 make. Because Defendant misled Plaintiff and members of both Classes,  
21 Defendant's conduct was "fraudulent." As a result of Defendant's fraudulent  
22 business acts and practices, Defendant has and continues to fraudulently obtain  
23 money from Plaintiff and members of the California Subclass.

24 62. Plaintiff requests that this Court cause Defendant to restore this  
25 unlawfully, unfairly, and fraudulently obtained money to them, and members of  
26 both Classes, to disgorge the profits Defendant made on these transactions, and to  
27 enjoin Defendant from violating the UCL or violating it in the same fashion in the  
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1 future as discussed herein. Otherwise, Plaintiff and members of the California  
2 Subclass may be irreparably harmed and/or denied an effective and complete  
3 remedy if such an order is not granted.

4 **FOURTH CLAIM FOR RELIEF**

5 **Breach of Express Warranty**  
6 ***(for the California Subclass)***

7 63. Plaintiff realleges and incorporates by reference the allegations  
8 previously asserted above.

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

11 65. California's express warranty statute provides that "(a) Any  
12 affirmation of fact or promise made by the seller to the buyer which relates to the  
13 goods and becomes part of the basis of the bargain creates an express warranty that  
14 the goods shall conform to the affirmation or promise," and "(b) Any description  
15 of the goods which is made part of the basis of the bargain creates an express  
16 warranty that the goods shall conform to the description." Cal. Com. Code § 2313.

17 66. Defendant has expressly warranted on the Folgers Coffee Products'  
18 packaging that they can make up to a specific number of servings. For example,  
19 Defendant expressly state on the packaging of the 865 gram canister for Folgers  
20 Classic Roast that it "MAKES UP TO 240 6 FL OZ CUPS." However, as alleged  
21 herein, this express representation is patently false, as this canister can only make  
22 up to 170 cups of coffee, or only about 70% of the amount of ground coffee  
23 promised by Defendant. All of the other varieties of the Folgers Coffee Products  
24 contain materially identical express representations that are false.

25 67. These representations about the Folgers Coffee Products: (a) are  
26 affirmations of fact or promises made by Defendant to consumers that the Folgers  
27 Coffee Products contain enough ground coffee to make a specific number of  
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1 servings; (b) became part of the basis of the bargain to purchase the Folgers Coffee  
2 Products when Plaintiff and other consumers relied on the representation; and (c)  
3 created an express warranty that the Folgers Coffee Products would conform to the  
4 affirmations of fact or promises. In the alternative, the representations about the  
5 Folgers Coffee Products are descriptions of goods which were made as part of the  
6 basis of the bargain to purchase the Folgers Coffee Products, and which created an  
7 express warranty that the Folgers Coffee Products would conform to the product  
8 description.

9 68. Plaintiff and members of the California Subclass reasonably and  
10 justifiably relied on the foregoing express warranties, believing that the Folgers  
11 Coffee Products did in fact conform to those warranties.

12 69. Defendant has breached the express warranties made to Plaintiff and  
13 members of the California Subclass by failing to manufacture the Folgers Coffee  
14 Products with enough ground coffee to make the specific number of servings that  
15 were expressly warranted on the packaging.

16 70. Plaintiff and the California Subclass paid a premium price for the  
17 Folgers Coffee Products but did not obtain the full value of the Folgers Coffee  
18 Products as represented. If Plaintiff and members of the Classes had known of the  
19 true nature of the Folgers Coffee Products, they would not have been willing to pay  
20 the premium price associated with the Folgers Coffee Products.

21 71. As a result, Plaintiff and the California Subclass suffered injury and  
22 deserve to recover all damages afforded under the law.

23 ///

1 **FIFTH CLAIM FOR RELIEF**  
2 **Breach of Implied Warranty**  
3 ***(for the California Subclass)***

4 72. Plaintiff realleges and incorporates by reference the allegations  
5 previously asserted above.

6 73. Plaintiff brings this claim individually and on behalf of the members  
7 of the proposed California Subclass.

8 74. California’s implied warranty of merchantability statutes provide that  
9 “a warranty that the goods shall be merchantable is implied in a contract for their  
10 sale if the seller is a merchant with respect to goods of that kind.” Cal. Com. Code  
11 § 2314(1).

12 75. California’s implied warranty of merchantability statutes also provide  
13 that “[g]oods to be merchantable must be at least such as . . . (f) conform to the  
14 promises or affirmations of fact made on the container or label if any.” Cal. Com.  
15 Code § 2314(2)(f).

16 76. Defendant is a merchant with respect to the sale of the Folgers Coffee  
17 Products. Therefore, a warranty of merchantability is implied in every contract for  
18 sale of the Folgers Coffee Products to California consumers.

19 77. By advertising the Folgers Coffee Products with their current  
20 packaging, Defendant made an implied promise that the Folgers Coffee Products  
21 contain enough ground coffee to make up to a specific number of servings. The  
22 Folgers Coffee Products have not “conformed to the promises...made on the  
23 container or label” because they do not contain enough ground coffee to make up  
24 to the specific number of servings. Plaintiff, as well as California consumers, did  
25 not receive the goods as impliedly warranted by Defendant to be merchantable.  
26  
27  
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1 78. Therefore, the Folgers Coffee Products are not merchantable under  
2 California law and Defendant has breached its implied warranty of merchantability  
3 with regard to the Folgers Coffee Products.

4 79. If Plaintiff and members of the Classes had known that the Products  
5 could not make as many servings of coffee as represented, they would not have  
6 been willing to pay the premium price associated with them. Therefore, as a direct  
7 and/or indirect result of Defendant's breach, Plaintiff and the California Subclass  
8 suffered injury and deserve to recover all damages afforded under the law.

9 **SIXTH CLAIM FOR RELIEF**

10 **Intentional Misrepresentation**

11 ***(for the Class and Subclass)***

12 80. Plaintiff realleges and incorporates by reference the allegations  
13 previously asserted above.

14 81. Plaintiff brings this claim individually and on behalf of the members  
15 of the proposed Class and Subclass against Defendant.

16 82. Defendant marketed the Folgers Coffee Products in a manner  
17 indicating that they contain enough ground coffee to make up to a specific number  
18 of servings. However, the Folgers Coffee Products cannot make anywhere close to  
19 the represented number of servings. Therefore, Defendant has made  
20 misrepresentations about the Folgers Coffee Products.

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

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

4 85. Defendant intends that Plaintiff and other consumers rely on these  
5 representations, as evidenced by the intentional and conspicuous placement of the  
6 misleading representations on the Folgers Coffee Products' packaging by  
7 Defendant.

8 86. Plaintiff and the other members of the Class and Subclass have  
9 reasonably and justifiably relied on Defendant's intentional misrepresentations  
10 when purchasing the Folgers Coffee Products, and had the correct facts been  
11 known, would not have purchased them at the prices at which they were offered.

12 87. Therefore, as a direct and proximate result of Defendant's intentional  
13 misrepresentations, Plaintiff and members of the Class and Subclass have suffered  
14 economic losses and other general and specific damages, including but not limited  
15 to the amounts paid for the Products, and any interest that would have accrued on  
16 those monies, all in an amount to be proven at trial.

17 **SEVENTH CLAIM FOR RELIEF**

18 **Negligent Misrepresentation**  
19 ***(for the Class and Subclass)***

20 88. Plaintiff realleges and incorporates by reference the allegations  
21 previously asserted above.

22 89. Plaintiff brings this claim individually and on behalf of the members  
23 of the proposed Class and Subclass against Defendant.

24 90. Defendant marketed the Folgers Coffee Products in a manner  
25 indicating that they contain enough ground coffee to make a specific number of  
26 servings. However, the Folgers Coffee Products cannot make anywhere close to  
27

1 the represented number of servings. Therefore, Defendant has made  
2 misrepresentations about the Folgers Coffee Products.

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

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

13 93. Defendant intended that Plaintiff and other consumers rely on these  
14 representations, as evidenced by the intentional and conspicuous placement of the  
15 misleading representations on the Folgers Coffee Products' packaging by  
16 Defendant.

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

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

1                                    **EIGHTH CLAIM FOR RELIEF**  
2                                    **Quasi Contract/Unjust Enrichment/Restitution**  
3                                    **(for the Class and Subclass)**

4                    96. Plaintiff realleges and incorporates by reference the allegations  
5 previously asserted above.

6                    97. Plaintiff brings this claim individually and on behalf of the members  
7 of the proposed Class and Subclass against Defendant.

8                    98. As alleged herein, Defendant has intentionally and recklessly made  
9 misleading representations to Plaintiff and members of the Class and Subclass to  
10 induce them to purchase the Folgers Coffee Products. Plaintiff and members of the  
11 Class and Subclass have reasonably relied on the misleading representations and  
12 have not received all of the benefits promised by Defendant. Plaintiff and members  
13 of the Class and Subclass therefore have been induced by Defendant's misleading  
14 and deceptive representations about the Folgers Coffee Products, and paid more  
15 money to Defendant for the Folgers Coffee Products than they otherwise would  
16 and/or should have paid.

17                    99. Plaintiff and members of the Class and Subclass have conferred a  
18 benefit upon Defendant as Defendant has retained monies paid to them by Plaintiff  
19 and members of the Class and Subclass.

20                    100. The monies received were obtained under circumstances that were at  
21 the expense of Plaintiff and members of the Class and Subclass – *i.e.*, Plaintiff and  
22 members of the Class and Subclass did not receive the full value of the benefit  
23 conferred upon Defendant.

24                    101. Therefore, it is inequitable and unjust for Defendant to retain the  
25 profit, benefit, or compensation conferred upon them without paying Plaintiffs and  
26 the members of the Class and Subclass back for the difference of the full value of  
27 the benefits compared to the value actually received.

1 102. As a direct and proximate result of Defendant’s unjust enrichment,  
2 Plaintiff and members of the Class and Subclass are entitled to restitution,  
3 disgorgement, and/or the imposition of a constructive trust upon all profits,  
4 benefits, and other compensation obtained by Defendant from their deceptive,  
5 misleading, and unlawful conduct as alleged herein.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, on behalf of himself and the Class and Subclass,  
8 demands judgment against Defendant and requests the entry of:

9 A. An order certifying the Class and Subclass as requested herein,  
10 appointing Plaintiff as Class Representative, and appointing his counsel as Class  
11 Counsel;

12 B. An order declaring that the conduct complained of herein violates the  
13 law, and awarding damages;

14 C. An order requiring Defendant to adopt proper label statements;

15 D. An award of attorneys’ fees and the reimbursement of litigation costs;

16 and

17 E. Such other and further relief as this Court may deem just, equitable, or  
18 proper.

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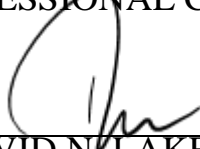
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury of all claims presented herein so triable.

3  
4 DATED: October 13, 2020

LAW OFFICES OF DAVID N. LAKE,  
A PROFESSIONAL CORPORATION

5  
6 By:   
7 DAVID N. LAKE  
8 Attorneys for Plaintiff and the  
Classes

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