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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 CAROLYN CHAFFIN, JENNIE KIM, LORI
13 SINGER, MICHELLE IRWIN, ROXANNE
14 SIMS, and DAWN MILLER, individually and
15 on behalf of all those similarly situated,

16 Plaintiffs,

17 v.

18 INTERNATIONAL COFFEE & TEA, LLC,
19 dba THE COFFEE BEAN & TEA LEAF,

20 Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs, Carolyn Chaffin, Jennie Kim, Lori Singer, Michelle Irwin, Roxanne Sims, and
2 Dawn Miller (referred to individually as “Plaintiff” or collectively as “Plaintiffs”) bring this Class
3 Action Complaint against the above-named INTERNATIONAL COFFEE & TEA, LLC, dba THE
4 COFFEE BEAN & TEA LEAF, (“Defendant” or “The Coffee Bean”), and in support thereof states
5 the following:

6 INTRODUCTION

7 1. Plaintiffs bring this action against The Coffee Bean on behalf of all consumers in
8 California, Nevada, Arizona or Oregon and in the United States who, within four years of the filing
9 of this lawsuit, have purchased coffee-based drinks, tea-based drinks, or other beverages from The
10 Coffee Bean that contained non-dairy milk alternatives such as oat milk or almond milk (“Non-Dairy
11 Alternatives”) and paid a surcharge for the Non-Dairy Alternatives, including plant-based or lactose-
12 free milk.

13 2. Plaintiffs suffer from lactose intolerance and milk allergies. It is medically necessary
14 for persons like Plaintiffs to avoid consuming drinks that contain milk. Plaintiffs ordered coffee-based
15 drinks, tea-based drinks, or other beverages at The Coffee Bean’s retail coffee shops in California
16 Nevada Arizona or Oregon? and in the United States from at least 2020 to the present.

17 3. When Plaintiffs visited The Coffee Bean’s coffee shops, they ordered drinks that
18 included milk as part of the regular menu item. Plaintiffs requested to substitute milk for Non-Dairy
19 Alternatives, specifically oat milk or almond milk, and were charged at least an extra \$0.80 surcharge
20 by The Coffee Bean for the substitution, depending on the date and the location of the store.

21 4. The Coffee Bean charged at least an \$0.80 surcharge (“Surcharge”) to its customers
22 who were lactose intolerant or have milk allergies to substitute milk for Non-Dairy Alternative
23 products in its beverages throughout the class period.

24 5. For example, at a location at Los Angeles Airport, Terminal 8, Coffee Bean charges a
25 \$1.00 Surcharge to its customers who were lactose intolerant or have a milk allergy to substitute Oat
26 Milk or Almond Milk for regular 2% milk.

27 6. Defendant’s Surcharge for Non-Dairy products is the same for all Non-Dairy
28 Alternatives, making no distinction among the costs of the various different Non-Dairy Alternatives.

1 7. In early 2024, the average price of a The Coffee Bean crafted coffee drink was \$5.18,
2 therefore the Surcharge could be up to 17% of the average drink price. Also, milk is not the only
3 ingredient in a drink at The Coffee Bean, therefore the Surcharge represents an even higher percentage
4 proportional to the price of milk (up to 200%).

5 8. There is no material difference between the price of lactose-containing milks and the
6 price of Non-Dairy Alternatives that would support levying the Surcharge to substitute for a Non-
7 Dairy Alternative in The Coffee Bean's drinks.

8 9. The Coffee Bean's standard offering in most beverages is 2% cow's milk.

9 10. The Coffee Bean will substitute whole milk, or fat-free skim milk for the 2% milk
10 ingredient to its beverages at no additional charge.

11 11. The Coffee Bean offers several options when it comes to the content of fat in the milk
12 but does not offer a lactose-free milk option.

13 12. The Coffee Bean will modify its regular beverage offerings to remove caffeine or
14 make caffeine-free beverages at no additional charge for persons with a variety of conditions,
15 including hypertension.

16 13. The Coffee Bean will modify its regular beverage offerings to remove sugar or use
17 sugar-free sweeteners at no additional charge for those persons with diabetes or who need to control
18 weight.

19 14. There is no expertise or additional work required of The Coffee Bean's employees that
20 would substitute whole milk or fat-free milk in place of 2% regular milk, or who would make caffeine-
21 free or sugar-free beverages, to also be able to substitute Non-Dairy Alternatives such as almond or
22 oat "milk" in place of 2% regular milk.

23 15. Lactose intolerance is a disability.

24 16. A milk allergy is a disability.

25 17. The Coffee Bean charges customers with lactose intolerance and milk allergies an
26 excessively high Surcharge to substitute Non-Dairy Alternatives in its drinks.

27 18. In this way, Defendant's conduct violates the Americans with Disabilities Act,
28 California Unruh Civil Rights Act, and constitutes common law Unjust Enrichment.

1 19. Defendant discriminates against Plaintiffs and the putative class members by levying
2 a Surcharge for its Non-Dairy Alternatives in the form of Non-Dairy Alternatives added to its coffee-
3 based drinks and other beverages.

4 20. Plaintiffs also seek declaratory and injunctive relief to ensure that Defendant charges
5 the same price to lactose intolerant customers and customers with milk allergies for the same menu
6 items as regular customers and that it does not add a Surcharge for Non-Dairy Alternatives such as
7 almond milk, oat milk or other lactose-free “milk.”

8 JURISDICTION AND VENUE

9 21. This Court has jurisdiction over the subject matter of this civil action pursuant to 28
10 U.S.C. § 1332(d). This is a putative class action where: (i) the proposed nationwide class consists of
11 more than 100 members; (ii) at least one class member has a different citizenship from Defendant;
12 and (iii) the claims of the proposed class exceed \$5,000,000 in the aggregate. The Court has
13 supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367(a).

14 22. The Court has personal jurisdiction over the Defendant due to its continuous and
15 systemic contacts with the State of California. Defendant operates more than 100 retail stores within
16 the State of California, including within the Central District of California. Defendant’s principal
17 place of business is located in Los Angeles, California, within the Central District of California.

18 23. Plaintiffs Carolyn Chaffin, Jennie Kim, Lori Singer, Michelle Irwin, Roxanne Sims,
19 and Dawn Miller reside in California. A substantial part of the events or omissions giving rise to the
20 claim occurred in the State of California.

21 24. Venue is proper in the Central District of California, pursuant to 28 U.S.C. §
22 1391(b)(1) and (2).

23 THE PARTIES

24 **A. Plaintiffs**

25 25. Plaintiff Carolyn Chaffin is and was at all times material a resident of the State of
26 California. Ms. Chaffin has purchased items, including coffee drinks, at various The Coffee Bean
27 locations throughout the state of California. As a result of her lactose intolerance, Ms. Chaffin is
28 substantially impaired in several major life activities and is required to consume non-dairy milk

1 alternatives. Ms. Chaffin has consumed The Coffee Bean's beverages at various The Coffee Bean
2 retail outlets in California and plans to continue to do so in the future.

3 26. Plaintiff Michelle Irwin is and was at all times material a resident of the State of
4 California. Ms. Irwin has purchased items, including coffee drinks, at various The Coffee Bean
5 locations throughout the state of California. As a result of her lactose intolerance, Ms. Irwin is
6 substantially impaired in several major life activities and is required to consume non-dairy milk
7 alternatives. Ms. Irwin has consumed The Coffee Bean beverages at various The Coffee Bean retail
8 outlets in California and plans to continue to do so in the future.

9 27. Plaintiff Jennie Kim is and was at all times material a resident of the State of
10 California. Ms. Kim has purchased items, including coffee drinks, at various The Coffee Bean
11 locations throughout the state of California. As a result of her lactose intolerance, Ms. Kim is
12 substantially impaired in several major life activities and is required to consume non-dairy milk
13 alternatives. Ms. Kim has consumed The Coffee Bean beverages at various The Coffee Bean retail
14 outlets in California and plans to continue to do so in the future.

15 28. Plaintiff Lori Singer is and was at all times material a resident of the State of
16 California. Ms. Singer has purchased items, including coffee drinks, at various The Coffee Bean
17 locations throughout the state of California. As a result of her lactose intolerance, Ms. Singer is
18 substantially impaired in several major life activities and is required to consume non-dairy milk
19 alternatives. Ms. Singer has consumed The Coffee Bean beverages at various The Coffee Bean retail
20 outlets in California and plans to continue to do so in the future.

21 29. Plaintiff Roxanne Sims is and was at all times material a resident of the State of
22 California. Ms. Sims has purchased items, including coffee drinks, at various The Coffee Bean
23 locations throughout the state of California. As a result of her lactose intolerance, Ms. Sims is
24 substantially impaired in several major life activities and is required to consume non-dairy milk
25 alternatives. Ms. Sims has consumed The Coffee Bean beverages at various The Coffee Bean retail
26 outlets in California and plans to continue to do so in the future.

27 30. Plaintiff Dawn Miller is and was at all times material a resident of the State of
28 California. Ms. Miller has purchased items, including coffee drinks, at various The Coffee Bean

1 locations throughout the state of California. As a result of her lactose intolerance, Ms. Miller is
2 substantially impaired in several major life activities and is required to consume non-dairy milk
3 alternatives. Ms. Miller has consumed The Coffee Bean beverages at various The Coffee Bean retail
4 outlets in California and plans to continue to do so in the future.

5 **B. Defendant**

6 31. Defendant International Coffee & Tea, LLC, dba The Coffee Bean & Tea Leaf has its
7 principal place of business at 5700 Wilshire Boulevard, Suite 120, Los Angeles, CA 90036. The
8 Coffee Bean operates over 135 coffee stores in the United States and over 125 in the state of
9 California.

10 **BACKGROUND FACTS**

11 32. Plaintiffs are lactose intolerant or have a milk allergy, requiring that they each
12 consume drinks that do not contain lactose or lactose-based products, which includes milk and many
13 milk-containing products.

14 33. Plaintiffs will suffer adverse health effects if they ingest milk or milk-containing
15 products, including stomach pain, digestive tract inflammation, bloating, bowel irregularities and
16 vomiting. As a result, Plaintiffs must pay very careful attention to the drinks they consume and can
17 only consume non-dairy products in drinks that contain Non-Dairy Alternatives including lactose-
18 free milk.

19 34. Plaintiffs' disability limits the major life activities of drinking (and the nutritional
20 benefits from ingesting drinks), and digestion.

21 35. Lactose intolerance is a disability that makes it difficult to digest lactose. Lactose is a
22 type of natural sugar found in milk and dairy products.

23 36. When lactose moves through the large intestine without being properly digested, it can
24 cause gas, bloating, belly pain and diarrhea. Many people who have a lactose intolerance cannot eat
25 or drink any amount of milk or milk-containing products.

26 37. Persons with lactose intolerance and milk allergies experience various levels of
27 reactions to the ingestion of milk and milk-containing products, including a bloated stomach,
28 intestinal gas, nausea and vomiting, stomach pain and cramping, and diarrhea.

1 38. Lactose intolerance occurs when the small intestine does not make enough of an
2 enzyme called lactase. The body needs lactase to break down and digest lactose. A person's body
3 may stop making lactase after a short-term illness such as an infection or as part of a lifelong chronic
4 disease such as cystic fibrosis.

5 39. A dairy allergy, or milk allergy, occurs when the immune system overreacts to the
6 presence of proteins in milk. When a person with a dairy allergy encounters products containing dairy,
7 it results in their immune system overreacting.

8 40. A main type of milk allergy, Immunoglobulin E (IgE) refers to a type of antibody that
9 the immune system may produce after recognizing a foreign substance, the presence of milk and dairy
10 products.

11 41. With IgE, the immune system mistakenly determines that dairy proteins are harmful
12 and responds by releasing chemicals, such as histamine. This release of chemicals causes symptoms
13 of an allergic response, which occur immediately. The symptoms may include swelling, breathing
14 problems, rashes, loss of consciousness and anaphylaxis.

15 42. A second type of milk allergy, non-IgE, may be confused with lactose intolerance in
16 some people because often reactions do not appear as quickly and can cause gastrointestinal systems
17 such as vomiting, bloating and diarrhea.

18 43. Because of their milk allergies, Plaintiffs must order Non-Dairy Alternatives at The
19 Coffee Bean containing Non-Dairy Alternatives such as almond milk, oat milk, or other lactose-free
20 "milk." Plaintiffs have, on every occasion, been levied the Surcharge by The Coffee Bean for Non-
21 Dairy Alternatives in their coffee drinks ordered and consumed from Defendant's stores in California.

22 44. The Non-Dairy Alternative Surcharge has real and practical consequences for
23 consumers suffering from lactose intolerance and milk allergies. A consumer will pay at least \$0.85
24 more for a coffee-based drink at The Coffee Bean for Non-Dairy Alternatives. Non-Dairy
25 Alternatives, which do not contain lactose, are medically necessary for individuals with lactose
26 intolerance and milk allergies. For those persons, the use of these Non-Dairy Alternatives is not a
27 choice.

28 45. And this surcharge is not justified by the costs of the Non-Dairy Alternatives. There

1 are no additional labor costs associated with using a Non-Dairy Alternative Surcharge in a beverage.
2 Additionally, the retail cost of Non-Dairy Alternatives is not significantly more than dairy products
3 (if at all). For example, as of the filing of this complaint, Whole Milk was priced at between \$0.03-
4 05 per fluid ounce, Half & Half between \$0.09-19 per fluid ounce, and Heavy Cream between \$0.17-
5 32 per fluid ounce. Yet, coconut, oat and soy milk only sell for between \$0.06-07 per fluid ounce.
6 Similarly, almond milk sells for between \$0.04-07 per fluid ounce. Accordingly, the retail price of
7 Whole Milk (which is provided for free by Defendant) is the same, if not more, than their Non-Dairy
8 Alternatives.

9 46. Accordingly, Non-Dairy Alternative Surcharges are not to defray the added costs of
10 use of these ingredients. Instead, the Surcharges are designed to profit from those consumers with
11 lactose intolerance and milk allergies.

12 47. Without the availability of Non-Dairy Alternatives options, consumers with lactose
13 intolerance and milk allergies are deprived of the opportunity to enjoy consuming The Coffee Bean
14 coffee beverages and drinks with their friends, family, and business associates.

15 48. Upon information and belief, The Coffee Bean sells approximately 40,000 coffee-
16 based drinks in the U.S. per day.

17 49. Various studies in the United States concluded that the portion of the U.S. population
18 that is lactose intolerant is at least 12% and may be as high as 48%.

19 50. Lactose intolerance is common in adults, almost 30 million persons in the United
20 States have it by the age of 20.

21 51. Dairy allergies are one of the most common allergies. In the United States, greater than
22 15 million people have a milk or dairy allergy.

23 52. The Coffee Bean's annual revenue in 2022 exceeded \$500 million dollars.

24 53. The Coffee Bean has over 12,000 employees and is one of the largest coffee chains in
25 the United States.

26 54. Because of its size, The Coffee Bean has the power to control the manufacturing costs
27 for Non-Dairy Alternatives.

28 55. Upon information and belief, The Coffee Bean has earned at least \$100 million dollars

1 in the United States as a result of its discriminatory and illegal levying of the Surcharge during the
2 class period.

3 56. Many coffee chains in the United States have eliminated the Surcharge, including Blue
4 Bottle, Philz and Tim Hortons.

5 57. The largest coffee chain in the world, Starbucks Corporation, has eliminated the
6 Surcharge at many of its international locations including in the European Union.

7 **CLASS ALLEGATIONS**

8 58. Plaintiffs bring this action as a class pursuant to Federal Rule of Civil Procedure
9 23(b)(2) and 23(b)(3) on behalf of the following classes:

10 **National Class:** All persons who (1) suffer from lactose intolerance, or an intolerance
11 to milk or milk-containing products, or milk allergies; and (2) who purchased drinks
12 or other items from The Coffee Bean within four years prior to the filing of the
Complaint and continuing to the present.

13 **California Subclass:** All persons who (1) are citizens of California; (2) suffer from
14 lactose intolerance, or an intolerance to milk or milk-containing products, or milk
15 allergies; and (3) who purchased drinks or other items from The Coffee Bean in
California within two years prior to the filing of the Complaint and continuing to the
present.

16 The classes exclude counsel representing the class, governmental entities, Defendant, any entity in
17 which Defendant has a controlling interest, Defendant's officers, directors, affiliates, legal
18 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer
19 presiding over this matter, the members of their immediate families and judicial staff, and any
20 individual whose interests are antagonistic to other putative class members.

21 59. Plaintiffs reserve the right to amend or modify the class descriptions with greater
22 particularity or further division into subclasses or limitation to particular issues.

23 60. This action has been brought and may properly be maintained as a class action under
24 Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the
25 litigation and the class is readily and easily ascertainable.

26 61. The potential members of the class are so numerous that joinder of all members of the
27 class is impractical. Although the precise number of putative class members has not been determined
28 at this time, Plaintiffs are informed and believe that the proposed classes include hundreds of

1 thousands of members.

2 62. There are common questions of law and fact that predominate over any questions
3 affecting only individual putative class members.

4 63. Plaintiffs' claims are typical of the claims of the members of the putative class because
5 Plaintiffs ordered and consumed drinks at Defendant's stores, ordered Non-Dairy Alternatives and
6 incurred a Surcharge for that alternative milk during the applicable class period. Plaintiffs and each
7 class member sustained similar injuries arising out of Defendant's conduct in violation of law. The
8 injuries of each member of the class were caused directly by Defendant's wrongful conduct. In
9 addition, the factual underpinning of Defendant's misconduct is common to all members of the
10 putative class and represents a common thread of misconduct resulting in injury to all members of the
11 class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims
12 of putative class members and are based on the same legal theory.

13 64. A class action is superior to other available means for the fair and efficient adjudication
14 of this controversy. Individual joinder of putative class members is not practicable and questions of
15 law and fact common to the class members predominate over any questions affecting only individual
16 putative class members.

17 65. Each member of the putative class has been damaged and is entitled to recovery by
18 reason of Defendant's illegal acts.

19 66. Class action treatment will allow those similarly situated to litigate their claims in the
20 manner that is most efficient and economical for the parties and the judicial system.

21 67. Plaintiffs are unaware of any difficulties that are likely to be construed in the
22 management of this action that would preclude its maintenance as a class action.

23 68. The disposition of all claims of the members of the class in a class action, rather than
24 individual actions, benefits the parties and the Court. The interests of the class members in controlling
25 prosecution of separate claims against the Defendant is small when compared to the efficiency of a
26 class action.

27 69. Plaintiffs will fairly and adequately represent and protect the interests of the class.
28 Plaintiffs' Counsel and Counsel for the putative class members are experienced and competent in

1 litigating class actions.

2 **CAUSES OF ACTION**

3 **COUNT I**

4 **VIOLATION OF TITLE III OF AMERICANS
5 WITH DISABILITIES ACT**

6 (On Behalf of all Plaintiffs and all other similarly situated National Class Members)

7 70. The allegations contained in Paragraphs 1-69 of the Complaint are incorporated by
8 reference as if fully set out herein.

9 71. Plaintiffs assert this count on their own behalf and on behalf of all other similarly
10 situated persons who are members of the National Class.

11 72. Defendant is a public accommodation under the Americans with Disabilities Act
12 (“ADA”), *see* 42 U.S.C. § 12181 (7)(B), and consequently Defendant is prohibited from
13 discriminating against Plaintiffs and other members of the putative class on the basis of disability in
14 the full and equal enjoyment of the goods, services, facilities, privileges and advantages provided by
15 Defendant.

16 73. The ADA requires that a “public accommodation shall make reasonable modifications
17 in policies, practices, or procedures, when the modifications are necessary to afford good, services,
18 facilities, privileges, advantages or accommodations to individuals with disabilities[.]”. 28 C.F.R. §
19 36.302(a). *See also* 42 U.S.C. § 12182(b)(2)(A)(ii) (stating that discrimination includes failing to
20 make reasonable modifications when necessary to afford goods, services, facilities, privileges,
21 advantages, or accommodations to individuals with disabilities).

22 74. The ADA makes it discriminatory to afford an individual or class of individuals, on
23 the basis of a disability or disabilities of such individual or class, directly, or through contractual,
24 licensing, or other arrangements with the opportunity to participate in or benefit from a good, service,
25 facility, privilege, advantage or accommodation that is not equal to that afforded to other
26 individuals[.]” 42 U.S.C. § 12182(a)(i). *See also* 42 U.S.C. § 12182(b)(i) (making it discriminatory
27 for a public accommodation to deny disabled persons the opportunity to participate in or benefit from
28 goods, services, privileges, advantages, or accommodations).

75. The ADA requires that a “public accommodation shall make reasonable modifications

1 in policies, practices, or procedures, when the modifications are necessary to afford goods, services,
2 facilities, privileges, advantages, or accommodations to individuals with disabilities[.]” 28 C.F.R. §
3 36.302(a).

4 76. Under the ADA, if an establishment already makes alterations or modifications, or
5 takes special orders for its customers, it must do so for the disabled customer requests as well. *See* 28
6 C.F.R. § 36.307(a) & (b) (“A public accommodation shall order accessible or special goods at the
7 request of an individual with disabilities, if, in the normal course of its operation, it makes special
8 orders on requests for unstocked goods, and if the accessible or special goods can be obtained from a
9 supplier with who the public accommodation customarily does business.”).

10 77. Most importantly, the ADA provides that a “public accommodation may not impose a
11 surcharge on a particular individual with a disability or any group of individuals with disabilities to
12 cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to
13 barrier removal, and reasonable modifications in policies, practices, or procedures, that are required
14 to provide that individual or group with the nondiscriminatory treatment required by the Act or this
15 part.” 28 C.F.R. § 36.301.

16 78. The ADA Amendments Act of 2008 (“ADAAA”) was passed to restore the intent and
17 protections of the Americans with Disabilities Act of 1990. The ADAAA contained specific
18 Congressional Findings that the amendments were intended to address and reject United States
19 Supreme Court decisions that had incorrectly found in individual cases that people with a range of
20 substantially limiting impairments are not people with disabilities. Specifically, the ADAAA cited to
21 the following holdings as having been incorrectly decided: 1) *Sutton v. United Air Lines, Inc.*, 527
22 U.S. 471 (1999); and 2) *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184
23 (2002).

24 79. The clear Congressional intent of the ADAAA was to expand and broaden the
25 disabilities that are included for protection under the ADA.

26 80. Section 4(a) of the ADAAA amends Section 3 of the ADA to include the following
27 language under Section 4 Rules of Construction Regarding the Definition of Disability: (A) the
28 definition of disability in this Act shall be construed in favor of broad coverage of individuals under

1 this Act, to the maximum extent permitted by the terms of this Act.

2 81. Lactose intolerance and milk allergies are a disability under the ADA. The ADA
3 defines a disability, in pertinent part, as “a physical or mental impairment that substantially limits one
4 or more major life activities.” 42 U.S.C. § 12102(1). An impairment means “[a]ny physiological
5 disorder or condition that affects “one or more body systems,” such as the neurological, digestive, or
6 immune systems. 28 C.F.R. 36.105(b)(1)(i). An impairment is a disability if it “substantially limits
7 the ability of an individual to perform a major life activity as compared to most people in the general
8 population.”

9 82. Drinking beverages, including coffee drinks, is a major life activity.

10 83. Digestion is a major and vital life activity.

11 84. Defendant violates the ADA because, as alleged above, it fails to make modifications
12 to persons with lactose intolerance and milk allergies but instead imposes a surcharge on this group
13 of persons, purportedly to cover the costs of such measures, even though there is no material
14 difference between the costs of regular milk and Non-Dairy Alternatives.

15 85. As a direct result of Defendant’s violation of the ADA, Plaintiffs and class members
16 have suffered injury, including but not limited to the violation of their statutory rights and loss of
17 money as a result of Defendant’s illegal price discrimination. Therefore, Plaintiffs and the putative
18 class members are entitled to damages and injunctive relief.

19 86. Defendant’s actions were willful, wanton, malicious, and intentional, and were done
20 in willful and conscious disregard of the rights of Plaintiffs and the putative class members.
21 Defendant’s actions were done with the express knowledge, consent, and ratification of Defendant’s
22 managerial employees and thereby justify the awarding of punitive and exemplary damages in an
23 amount to be determined at trial.

24 **COUNT II**
25 **VIOLATION OF CALIFORNIA’S UNRUH**
26 **CIVIL RIGHTS ACT (CA)**

26 (On Behalf of Carolyn Chaffin, Jennie Kim, Lori Singer, Michelle Irwin, Roxanne Sims, and Dawn
27 Miller, and all other similarly situated California Subclass Members)

27 87. The allegations contained in paragraphs 1-69 of the Complaint are incorporated by
28

1 reference as if fully set out herein. Plaintiffs Carolyn Chaffin, Jennie Kim, Lori Singer, Michelle
2 Irwin, Roxanne Sims, and Dawn Miller assert this count on their own behalf and on behalf of the
3 California subclass, as defined above.

4 88. California’s Unruh Act provides, “All persons within the jurisdiction of this state are
5 free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability,
6 medical condition, marital status, or sexual orientation are entitled to the full and equal
7 accommodations, advantages, facilities, privileges, or services in all business establishments of every
8 kind whatsoever.” Cal. Civ. Code § 51(b).

9 89. The Unruh Act prohibits businesses from engaging in unreasonable, arbitrary, or
10 invidious discrimination, including through the unequal treatment of patrons. For example, businesses
11 may not offer discounts to some classes of patrons but require full price from other patrons, where
12 the price difference is based on arbitrary, class-based generalizations (such as gender).

13 90. The Unruh Act provides that whoever “denies, aids or incites a denial, or makes any
14 discrimination or distinction contrary to [the Act]” is liable for each and every offense, up to three
15 times the amount of actual damages but in no case less than \$4,000 plus attorneys’ fees. *Id* at § 52(a).

16 91. Defendant’s conduct constitutes a violation of California’s Unruh Act, Cal. Civ. Code
17 § 51, *et seq.* Defendant’s practice of surcharging Non-Dairy Alternatives purchased by consumers
18 who are lactose intolerant constitutes price discrimination in violation of the Unruh Act.

19 **Intentional Discrimination**

20 92. The Surcharge constitutes intentional discrimination against persons with lactose
21 intolerance and milk allergies. Defendant created a surcharge targeted to persons with lactose
22 intolerance, because Defendant accommodates other customers’ dietary preferences and allergies free
23 of charge but imposes a surcharge only on persons with lactose intolerance.

24 93. As alleged above, Defendant provides modifications or substitutes for persons with
25 heart conditions (caffeine-free) or diabetes (sugar-free) at no additional charge. Consumers with these
26 dietary preferences pay no additional money for the accommodations Defendant affords them.

27 94. Consumers who need Non-Dairy Alternatives because of their disability, specifically
28 lactose intolerance, are targeted for the Surcharge because of their specific medical condition.

1 95. Defendant is making a choice to impose the Surcharge for necessary beverage
2 modifications for one class of persons with a specific disability, lactose intolerance, while at the same
3 time not imposing any extra charge for those persons with another medical condition. This is the
4 essence of intentional discrimination.

5 96. Defendant is disproportionately profiting from its customers with lactose intolerance.

6 97. Defendant's Surcharge greatly exceeds the amount of any minimal difference in costs
7 associated with Non-Dairy Alternatives.

8 98. Defendant's Surcharge is the same for all Non-Dairy Alternatives, making no
9 distinction among the costs of the various different Non-Dairy Alternatives.

10 99. Defendant is intentionally profiting from the sale of Non-Dairy Alternatives at the
11 expense of those persons with lactose intolerance.

12 **Violations of the ADA**

13 100. A violation of the federal Americans with Disabilities Act (*see* 42 U.S.C. § 12111(9),
14 42 U.S.C. § 12182(a)) also constitutes a violation of the Unruh Act, Cal Civ. Code § 51(f).

15 101. Defendant is a public accommodation under the ADA, (*see* 42 U.S.C. § 12181(7)(B),
16 and consequently Defendant is prohibited from discriminating against Plaintiffs and other members
17 of the putative class on the basis of disability in the full and equal enjoyment of the goods, services,
18 facilities, privileges, and advantages offered by Defendant.

19 102. The ADA requires that "a public accommodation shall make reasonable modifications
20 in policies, practices, or procedures, when the modifications are necessary to afford good, services,
21 facilities, privileges, advantages, or accommodations to individuals with disabilities[.]" 28 C.F.R.
22 36.302(a). *See also* 42 U.S.C. § 12182(b)(2)(A)(ii) (stating that discrimination includes failing to
23 make reasonable modifications when necessary to afford goods, services, facilities, privileges,
24 advantages, or accommodations to individuals with disabilities).

25 103. The ADA makes it "discriminatory to afford an individual or class of individuals, on
26 the basis of a disability or disabilities of such individual or class, directly, or through contractual,
27 licensing, or other arrangements with the opportunity to participate in or benefit form a good, service,
28 facility, privilege, advantage, or accommodation that is not equal to that afforded to other

1 individuals[.]”. 42 U.S.C. § 12182(a)(i). *See also* 42 U.S.C. § 12182(b)(i) (making it discriminatory
2 for a public accommodation to deny disabled persons the opportunity to participate in or benefit from
3 goods, services, privileges, advantages or accommodations).

4 104. The ADA requires that “a public accommodation shall make reasonable modifications
5 in policies, practices, or procedures, when the modifications are necessary to afford goods, services,
6 facilities, privileges, advantages, or accommodations to individuals with disabilities[.]” 28 C.F.R. §
7 36.302(a).

8 105. Under the ADA, if an establishment already makes alterations or modifications, or
9 takes special orders for its customers, it must do so for disabled customer requests as well. *See* 28
10 C.F.R. § 36.307(a) & (b) (“A public accommodation shall order accessible or special goods at the
11 request of an individual with disabilities, if, in the normal course of its operation, it makes special
12 orders on request for unstacked goods, and if the accessible or special goods can be obtained from a
13 supplier with whom the public accommodation customarily does business.”). Special foods are
14 expressly included among special orders. *See* 28 C.F.R. § 36.307(c) (“Examples of accessible or
15 special goods includes items such as Braille versions of books, books on audio cassettes, closed-
16 captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary
17 needs.”)

18 106. Importantly, the ADA provides that “a public accommodation may not impose a
19 surcharge on a particular individual with a disability or any group of individuals with disabilities to
20 cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to
21 barrier removal, and reasonable modifications in policies, practices, or procedures, that are required
22 to provide that individual or group with the nondiscriminatory treatment required by the Act or this
23 part.” 28 C.F.R. § 36.301.

24 107. Defendant violates the ADA because, as alleged above, it fails to make modifications
25 that are necessary to afford goods and services to persons with lactose intolerance but instead imposes
26 a surcharge on this group, purportedly to cover the cost of such measures.

27 108. Moreover, also as alleged above, although Defendant already offers modifications of
28 its beverages to non-disabled customers free of charge, it fails to offer persons with lactose intolerance

1 modifications free of charge.

2 109. Finally, Defendant's policy of charging all customers a surcharge for Non-Dairy
3 Alternatives disproportionately affects persons with lactose intolerance, regardless of any express
4 intent by Defendant to discriminate against this group.

5 110. As a direct and proximate cause of Defendant's violation of the Unruh Act, Plaintiffs
6 and California Subclass members have suffered injury, including but not limited to the violation of
7 their statutory rights and loss of money as the result of the illegal Surcharge. Therefore, they are
8 entitled to damages and injunctive relief.

9 111. The aforementioned acts of Defendant were willful, wanton, malicious, intentional,
10 oppressive, and despicable and were done in willful and conscious disregard of the rights of Plaintiffs
11 and class members, and were done by managerial agents and employees of Defendant, or with the
12 express knowledge, consent, and ratification of managerial employees of Defendant, and thereby
13 justify the awarding of punitive and exemplary damages in an amount to be determined at the time of
14 the trial.

15 112. Under the Unruh Act, a Plaintiff is entitled to recover actual damages and an amount
16 up to three times the actual damages for each violation of the Unruh Act, "but in no case less than
17 \$4,000..." for each and every offense (Cal. Civ. Code § 52(a).

18 113. Plaintiffs and Class members are entitled to actual and treble damages for Defendant's
19 violation of the Unruh Act.

20 **COUNT III**
21 **UNJUST ENRICHMENT/RESTITUTION**

22 114. The allegations contained in paragraphs 1-69 of the Complaint are incorporated by
23 reference as if fully set out herein. The named Plaintiffs assert this count on their own behalf and on
24 behalf of the National class, as defined above.

25 115. Plaintiffs conferred a benefit to Defendant by allowing them to collect a surcharge in
26 exchange for providing Plaintiffs with non-dairy alternatives such as lactose-free milk.

27 116. Defendant enriched itself at the expense of Plaintiffs and the putative class members
28 by its illegal levying of the Surcharge for Non-Dairy Alternatives.

1 117. Plaintiffs and putative class members continue to suffer injuries as a result of the
2 Defendant's illegal and discriminatory behavior. If the Defendant does not compensate the
3 Plaintiffs, it would be unjustly enriched as a result of its unlawful acts or practices.

4 118. It is an equitable principle that no one should be allowed to profit from his own
5 wrongdoing; therefore it would be inequitable for the Defendant to retain said benefit and reap unjust
6 enrichment.

7 119. Since the Defendant unjustly enriched itself at the expense of the Plaintiffs and
8 putative class members, Plaintiffs request the disgorgement of these illegally obtained monies.

9 120. Due to Defendant's conduct, Plaintiffs and the putative class members are entitled to
10 damages according to proof, but in no event less than \$5,000,000.00.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs CAROLYN CHAFFIN, JENNIE KIM, LORI SINGER,
13 MICHELLE IRWIN, ROXANNE SIMS, and DAWN MILLER, respectfully request that this Court
14 enter judgment in their favor and in favor of those similarly situated, as follows:

- 15 1. Certifying and maintaining this action as a class action, with the named Plaintiffs as
16 designated class representative and with their counsel appointed as class counsel;
 - 17 2. A declaration that Defendant is in violation of each of the Counts set forth above;
 - 18 3. Award Plaintiffs and those similarly situated statutory, compensatory, and treble
19 damages;
 - 20 4. Award Plaintiffs and those similarly situated liquidated damages;
 - 21 5. Order the disgorgement of illegally obtained monies;
 - 22 6. Award each named Plaintiff a service award;
 - 23 7. Award attorneys' fees and costs; and
 - 24 8. Grant such further relief as the Court deems just and proper.
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JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial of the claims asserted in this Class Action Complaint.

Dated: April 17, 2024

Respectfully submitted,

/s/ William M. Aron
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