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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RAMON IBARRA, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

THE FOLGER COFFEE COMPANY, an  
Ohio corporation, and DOES 1-20,  
inclusive,

Defendants.

Case No.: **'20CV0850 L BLM**

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Ramon Ibarra (“Plaintiff” or “Ibarra”), on behalf of himself and all other  
2 similarly situated (“Class Members”), brings this consumer class action against Defendant,  
3 The Folger Coffee Company (“Defendant” or “Folgers”), for unlawful, unfair, and  
4 deceptive business practices in violation of California Business & Professions Code  
5 section 17200, *et seq.*, California Business & Professions Code section 17500, *et seq.*, and  
6 California Civil Code section 1750, *et seq.* and alleges as follows:

7 **I. NATURE OF ACTION**

8 1. Folgers coffee is a household name with sales comprising a significant portion  
9 of the \$7.8 billion in net sales reported by corporate parent, The J.M. Smucker Company,  
10 during its last fiscal year. Notwithstanding its unmatched success, the coffee giant engages  
11 in widespread false and deceptive advertising on its staple coffee cannisters, depriving  
12 consumers of the benefit of the bargain. In a practice that clearly offends reasonable  
13 consumer expectations, Defendant engages in a classic bait-and-switch scheme that causes  
14 unsuspecting consumers to spend more money for less than the advertised amount of coffee  
15 they believe they are purchasing. The packaging and labeling of many Folgers coffee  
16 product cannisters (the “Coffee Products”) prominently advertise that they will produce an  
17 amount of six fluid ounce cups when, in fact, they do not, and the label’s advertised cup  
18 yield is completely arbitrary.

19 2. In Plaintiff’s case, the cannister purchased—Folgers French Roast, Med-Dark  
20 —prominently advertises on its front label that it “MAKES UP TO 210 6 FL OZ CUPS.”  
21 Instructions on the back panel of the cannister direct consumers to use the following  
22 measurements: “Cold Water: 1 Serving (6 fl oz)” with “Folgers Coffee: 1 Tablespoon”  
23 which yields “1 Serving (6 fl oz.)”. This means that each French Roast cannister should  
24 contain 210 tablespoons of coffee. However, if the back-panel instructions are followed,  
25 the cannister only produces approximately 156 six fluid-ounce-servings, 54 short of what  
26 is advertised on the front panel. The cannister only contains approximately  
27 156 tablespoons of ground coffee.  
28

3. The same French Roast cannister also comes up short if the coffee is brewed in bulk and the back-panel's second instruction is followed. This instruction directs users to use "Cold Water: 10 Servings" with "1/2 Measuring Cup"<sup>1</sup> for "10 Servings." If 8 tablespoons generate 10 servings, then 156 tablespoons—the entirety of the cannister—produces 195 six fluid-ounce-servings,<sup>2</sup> 15 cups short of what Folgers represents on its front panel.

4. Other Coffee Products used to engage in the same scheme, which are also the subject of this action, are depicted in the chart in ¶ 6. These include several of Defendant's roasts in various strengths and sizes. In each Coffee Product, the top right corner of the front panel prominently and conspicuously states the number of cups the cannister will produce, as shown in the French Roast cannister Plaintiff purchased below:



5. The back panel contains the serving instructions "for best brewing results" and, significantly, goes on to state "This cannisters makes up to 210 suggested strength

<sup>1</sup> Or 8 tablespoons.

<sup>2</sup>  $8/10 = 156/195$ .

6 fl oz servings.” But the only serving suggestions on the product are those provided immediately above this statement, as set forth in ¶¶ 2-3 and depicted below:



6. As stated in in ¶¶ 2-3 above and depicted below in ¶ 6, these instructions or suggestions do not produce 210 servings. Consumers reasonably expect that if they follow the serving instructions, the Coffee Products will produce the number of servings/cups of coffee prominently advertised on their front and back panels. However, they do not. Tests performed on the Coffee Products, including the same French Roast cannister purchased by Plaintiff, showed that Defendant uniformly and systematically misrepresents its Coffee Products:

Coffee Product	Strength	Weight	Advertised Number of Cups Per Coffee Product	Actual Measured Number of Cups (at 1 Tbsp per 1 cup serv.)	Measured Number of Cups (at 8 Tbsp per 10 cup servs.)
Folgers French Roast	Med-Dark	686 g	210	156	195
Folgers 100% Colombian	Medium	686 g	210	156	195
Folgers Black Silk	Dark	686 g	210	156	195
Folgers Brazilian Blend	Medium	686 g	210	156	195
Folgers Gourmet Supreme	Med-Dark	686 g	210	156	195
Folgers House Blend	Medium	686 g	210	156	195
Folgers Special Roast	Medium	686 g	210	156	195
Folgers Classic Roast	Medium	865 g	240	175	219
Folgers Class Decaf	Medium	865 g	240	175	219
Folgers ½ Caff	Medium	720 g	210	152	190
Folgers Coffeehouse Blend	Med-Dark	720 g	210	152	190
Folgers Breakfast Blend	Mild	720 g	210	152	190
Folgers Simply Smooth	Mild	882 g	240	176	220

7. At no time does Defendant inform consumers as to the true number of cups a Coffee Product will yield if the back-panel instructions are followed, or that they will not result in the advertised amounts of servings. Nor does Defendant inform consumers how at all it derived the “Makes Up To” figure stated on its front and back panels.

8. Plaintiff and Class Members relied to their detriment on Defendant’s representations regarding the amount of servings each Coffee Product would produce and would not have paid to purchase Defendant’s Coffee Products, or would not have paid as much as they did for said products, had they known the truth about the Coffee Products’ actual serving yield according to its instructions. As a result, Plaintiff and the Class Members suffered monetary damages as a result of Defendants’ deception and misrepresentations.



## II. JURISDICTION AND VENUE

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

10. The Court has personal jurisdiction over Defendant because it conducts substantial business in California. Defendant has and continues to actively market, promote, and sell the Coffee Products in the State of California through numerous retailers and online channels, and Defendant has sufficient minimum contacts with this State and/or has sufficiently availed itself of the market in this State through its marketing, promotion and sales within this State to render the exercise of jurisdiction by this Court permissible.

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

## III. PARTIES

### **Plaintiff**

12. Plaintiff Ramon Ibarra resides in San Diego County, California. In or about December 2019, Ibarra purchased three cannisters of Folgers French Roast, Med-Dark, 210 Cups, for \$12.59 each from Garden Farms Market, a grocery store located in Lakeside, California. Plaintiff read the Coffee Product's labeling stating that each cannister would produce 210 six-ounce cups of coffee before purchasing the Coffee Product. In reliance on this representation, Plaintiff purchased the French Roast for his own personal benefit.

13. Plaintiff would not have purchased the Coffee Product, or would not have paid as much as he did, had he known that Defendant misrepresented the amount of servings each cannister would produce. Plaintiff was further damaged in his purchase because Defendant's false advertisement artificially inflated the price of the Coffee Product as a

1 result of increased consumer demand generated by the false advertisement, which naturally  
2 led to an increase in the price charged.

3 14. Plaintiff is susceptible to this reoccurring harm because he cannot be certain  
4 that Defendant has corrected this deceptive and false advertising scheme, and he desires to  
5 continue to purchase Defendant's Coffee Products. Plaintiff greatly enjoys Folgers coffee  
6 and would purchase it fairly regularly and in different varieties, not just the French Roast.  
7 However, he currently cannot trust that Defendant will label and/or advertise the Coffee  
8 Products truthfully and in a non-misleading fashion in compliance with California law.  
9 Plaintiff simply does not have the resources to ensure that Defendant is complying with  
10 California and federal law with respect to its labeling and advertising of the Coffee  
11 Products.

12 15. Additionally, because of the breadth of Coffee Products involved in  
13 Defendant's deceit (at least 13), and the likelihood that Defendant may yet develop and  
14 market additional products that misrepresent the serving yield, Plaintiff may again, though  
15 by mistake, purchase a falsely-advertised product from Defendant under the impression  
16 that the product was improved.

### 17 **Defendant**

18 16. Defendant is a corporation organized and existing under the laws of the state  
19 of Ohio, with its headquarters and principal place of business at One Strawberry Lane,  
20 Orrville, OH 44667. Folgers has a rich history dating back to 1850 and is arguably the  
21 most well-known coffee maker in the United States. The coffee giant excels in offering a  
22 wide range of products to customers, including varying flavors, roasts and strength of  
23 coffee. Beginning in 1850 in San Francisco, Folgers is now a household name recognized  
24 and sold around the world. Since the early 1990s, it has been the largest-selling ground  
25 coffee in the United States. In the 1980s, Folgers' slogan "The best part of waking up is  
26 Folgers in your cup!" and the well-associated jingle became recognizable in households  
27 across the country, along with the Folgers name. Folgers generates millions of dollars in  
28 sales each year, a significant portion of which is derived from sales of the Coffee Products

1 in California. In 2008, Folgers was acquired by J.M. Smucker from Procter & Gamble for  
2 a reported \$3 billion.

3 17. Plaintiff does not know the true names or capacities of the persons or entities  
4 sued herein as Does 1-50, inclusive, and therefore sues such defendants by such fictitious  
5 names. Plaintiff is informed and believes, and upon such information and belief alleges,  
6 that each of the Doe defendants is, in some manner, legally responsible for the damages  
7 suffered by Plaintiff and the Class Members as alleged herein. Plaintiff will amend his  
8 Complaint to set forth the true names and capacities of these defendants when they have  
9 been ascertained, along with appropriate charging allegations, as may be necessary.

#### 10 IV. GENERAL ALLEGATIONS

11 18. Plaintiff repeats and re-alleges the allegations contained in every preceding  
12 paragraph as if fully set forth herein.

13 19. Folgers' advertising and marketing of its Coffee Products is false, misleading  
14 and/or omits material information to consumers because consumers, including Plaintiff,  
15 expect that if the Coffee Product's back panel instructions are followed, the cannister will  
16 yield the advertised number of cups, which are prominently displayed on the front panel  
17 and restated on the back panel of the cannister. However, nowhere on the Coffee Product  
18 packaging/label does Defendant notify consumers that the Coffee Product will not yield  
19 the number of cups represented if the instructions are followed. Nor does Coffee Product  
20 packaging/label indicate how many cups will actually be produced if the instructions are  
21 followed, or even how the purchaser can brew the coffee to produce the advertised "Makes  
22 Up To" number of cups. Instead, the "Makes Up To \_\_ Cups" serving figure is completely  
23 arbitrary.<sup>3</sup> This combination—the misrepresented "Makes Up To \_\_ Cups" and the back-  
24 panel instructions resulting in the less servings—renders labeling of the Coffee Products  
25 inherently misleading.

26  
27  
28 <sup>3</sup> For instance, without any type of qualification or brewing instructions, consumers could conceivably produce 500 cups of coffee from a cannister if the coffee grounds were diluted enough.



20. The back-panel instructions of each Coffee Product clearly state that consumers should use either one tablespoon of ground coffee per six fluid-ounce-serving or a 1/2 cup (8 tablespoons) per ten six-ounce servings “for best brewing results.” No other brewing suggestions, recommendations or instructions appear on the Coffee Products. Yet, Defendant completely fails to provide any methodology or measurements whatsoever as to how a Coffee Product can be brewed to produce the “Makes Up To \_\_\_ Cups” amount that it advertises. Defendant similarly fails to indicate: (1) how many servings will result from following the instructions contained on the back panel and (2) that following the instructions will produce less than the “Makes Up To \_\_\_ Cups” figure. These misrepresentations and omissions violate consumers’ reasonable expectations and, as alleged herein, California’s consumer protection statutes. The number of servings a Coffee Product yields according to its instructions can be determined with objective factual evidence, which shows that each Coffee Product is falsely advertised.

21. Throughout the class period defined below, Defendant has engaged in, and continues to engage in, an advertising and marketing campaign that misrepresents its Coffee Products. Defendant has engaged in, and continues to engage in, a pattern of willful conduct, through affirmative misrepresentations and/or material omissions, designed to mislead and lure consumers into purchasing Coffee Products they would not have otherwise purchased. As a result of this deception, Defendant has sold thousands, if not millions, of Coffee Products to unsuspecting consumers across California through its retailers and online sales channels.

22. Defendant’s advertising claims are false, misleading and deceptive because Defendant willfully misrepresents and omits from its labeling of the Coffee Products material information to consumers’ purchasing decision—viz. the number of coffee servings that each Coffee Product will produce. Defendant, thus, intentionally misleads consumers into purchasing its products based on its false advertising of the Coffee Products as having characteristics that they, in fact, do not have.

23. In making these false, misleading, and deceptive representations and omissions described herein, Defendant knew and intended that consumers would purchase the Coffee Products and pay more for them under the false but reasonable belief that each would produce more coffee servings than each Coffee Product actually does. The marketing of the Coffee Products as producing more coffee servings than they actually do demonstrates Defendant's awareness that the claim about the Coffee Products' serving yield is material to consumers, otherwise Defendant would not so prominently advertise how many cups of coffee each Coffee Product cannister produces.

24. Defendant's deceptive representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchasing decisions. Plaintiff and Class Members reasonably relied—to their detriment—on Defendant's misleading representations and omissions. Such representations and omissions misled Plaintiff and the Class, and are likely to mislead the public, because, as alleged above, reasonable consumers understand that if they follow the only brewing instructions on the product, the Coffee Product will produce up to its advertised number of servings.

25. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions, Defendant injured Plaintiff and the Class Members in that they: (1) paid a sum of money more for a Coffee Product that was not what Defendant represented; (2) were deprived of the benefit of the bargain because the Coffee Products they purchased were different than what Defendant had advertised; and (3) were deprived of the benefit of the bargain because the Coffee Products they purchased had less value than what Defendant represented.

26. Had Defendant not made the false, misleading, and deceptive representations and omissions as alleged herein, Plaintiff and the Class Members would not have purchased the Coffee Products or would not have paid as much for them. Consequently, Plaintiff and the Class Members suffered injury in fact and lost money or property as result of Defendant's wrongful conduct.

1 V. CLASS ALLEGATIONS

2 27. Plaintiff repeats and re-alleges the allegations contained in every preceding  
3 paragraph as if fully set forth herein.

4 28. Plaintiff brings this action on behalf of himself and all other similarly situated  
5 Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure and seeks  
6 certification of the following Class against Defendant for violations of California state  
7 laws:

8 All consumers within the State of California who purchased any Folgers  
9 Coffee Product(s) advertising a number of coffee cups that the product would  
10 purportedly produce during the applicable statute of limitations and who have  
11 not received a refund or credit for their purchase(s). Excluded from the Class  
are Defendant's current or former officers, directors, and employees; counsel  
for Plaintiff and Defendant; and the judicial officer to whom this lawsuit is  
assigned.

12 29. Numerosity: The members of the Class are so numerous that joinder of all  
13 members is impracticable. Plaintiff is informed and believes that the proposed Class  
14 contains hundreds of thousands of individuals who have been damaged by Defendant's  
15 conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff.

16 30. Existence and Predominance of Common Questions of Law and Fact: This  
17 action involves common questions of law and fact, which predominate over any questions  
18 affecting individual Class Members. These common legal and factual questions include,  
19 but are not limited to, the following:

20 a. Whether Defendant made false and/or misleading statements to the  
21 Class and the public concerning the cup yield in the Coffee Products;

22 b. Whether Defendant omitted material information to the public  
23 concerning the actual cup yield of the Coffee Products;

24 c. Whether Defendant's packaging for the Coffee Products is misleading  
25 and deceptive;

26 d. Whether Defendant's advertising for the Coffee Products is misleading  
27 and deceptive;  
28

1 e. Whether Defendant has engaged in unfair, fraudulent, or unlawful  
2 business practices with respect to the advertising, marketing, and sale of the Coffee  
3 Products;

4 f. Whether Defendant's representations concerning the Coffee Products  
5 were likely to deceive a reasonable consumer;

6 g. Whether Defendant's omissions concerning the Coffee Products were  
7 likely to deceive a reasonable consumer;

8 h. Whether Defendant represents to consumers that the Coffee Products  
9 have characteristics, benefits, or qualities that the Coffee Products do not have;

10 i. Whether Defendant advertised the Coffee Products with intent to sell  
11 them not as advertised; and

12 j. Whether Defendant engaged in false advertising with respect to the  
13 Coffee Products.

14 31. Typicality: Plaintiff's claims are typical of the claims of the Class Members  
15 because, *inter alia*, all Class Member have been deceived (or were reasonably likely to be  
16 deceived) in the same way by Defendant's false and misleading advertising claims about  
17 the serving yield of its Coffee Products. Plaintiff is advancing the same claims and legal  
18 theories on behalf of himself and all Class Members.

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

23 33. Superiority: The nature of this action and the nature of the laws available to  
24 Plaintiff and the Class make the use of the class action format a particularly efficient and  
25 appropriate procedure to afford relief to him and the Class for the wrongs alleged. The  
26 damages or other financial detriment suffered by individual Class Members is miniscule  
27 compared to the burden and expense that would be entailed by individual litigation of their  
28 claims against Defendant. It would thus be virtually impossible for Plaintiff and Class

Members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent the class action, Class Members would not likely recover, or would not likely have the chance to recover, damages and/or restitution from Defendant, which would continue to retain the proceeds of its wrongful conduct. Additionally, injunctive relief for the benefit of Class Members and the public would not be possible absent class treatment and Defendant's wrongful conduct would persist unabated.

## **VI. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF UNFAIR COMPETITION LAW ("UCL") CAL. BUS. & PROF. CODE § 17200, *et seq.***

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

35. The UCL defines "unfair business competition" to include any "unlawful, unfair, or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. CAL. BUS. & PROF. CODE § 17200.

36. Plaintiff has standing to pursue this claim because Plaintiff has suffered injury-in-fact and has lost money or property as a result of Defendant's unlawful, unfair, and fraudulent actions. Specifically, Plaintiff purchased the Folgers French Roast Coffee Products for his own personal consumption. In doing so, Plaintiff relied upon the false representations that the Coffee Products would produce more servings than they actually did. Plaintiff spent money in the transaction that he otherwise would not have spent had he known the truth about Defendant's advertising claims.

#### ***"Unfair" Prong***

37. A business act or practice is "unfair" under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications, and motives of the practice against the gravity of the harm to the alleged victims.



1        38. Defendant's conduct constitutes an "unfair" business practice because, as  
2 alleged, Defendant has engaged, and continues to engage, in a false advertising campaign  
3 that misleads consumers into believing that the Coffee Products they purchase will yield a  
4 greater number of servings than each cannister actually contains.

5        39. Defendant's conduct, as alleged above, was not motivated by any legitimate  
6 business or economic need or rationale, other than to maximize its profits at its customers'  
7 expense. The harm and adverse impact of Defendant's conduct on members of the general  
8 public was neither outweighed nor justified by any legitimate reasons, justifications, or  
9 motives. Such conduct was and is designed solely to wrongfully extract monies from  
10 consumers, including Plaintiff, to which Defendant is not entitled. Defendant could have,  
11 but has not, used alternate means of effecting its legitimate business needs, such as by  
12 properly disclosing (1) how many servings would result from following the Coffee  
13 Products' brewing instructions; (2) that the instructions will produce less than the  
14 advertised "Makes Up To \_\_ Cups" number of servings, or (3) how to measure and/or brew  
15 the coffee grounds to derive the "Makes Up To \_\_ Cups" number of servings.

16        40. Defendant's conduct harms the interests of consumers and market  
17 competition. There is no valid justification for Defendant's conduct and Defendant's  
18 business practices, alleged herein, are immoral, unethical, oppressive, unscrupulous,  
19 unconscionable and/or substantially injurious to Plaintiff and Class Members because  
20 Defendant's conduct violates consumers' reasonable expectations. If the Coffee Products  
21 had been advertised in a non-misleading fashion, as Defendant could easily have done,  
22 Plaintiff and other Class Members could have considered other options for purchasing  
23 coffee grounds.

24        ***"Fraudulent" Prong***

25        41. A business act or practice is "fraudulent" under the UCL if it is likely to  
26 deceive members of the consuming public.

27        42. Defendant engaged in a fraudulent business practice by knowingly  
28 representing to consumers that the Coffee Products it sells will produce a greater number

1 of servings than each cannister actually does. Defendant's practice deceived Plaintiff and  
2 the Class, who purchased the Coffee Products in reliance on the advertised serving yield,  
3 and is highly likely to deceive members of the consuming public because, as alleged above,  
4 the practice violates consumers' reasonable expectations regarding how many servings  
5 each Coffee Product will produce. Such practice is devoid of utility and functions only to  
6 maximize Defendant's profits at the expense of the consuming public. Any benefit gained  
7 by Defendant's practice is far outweighed by the gravity of harm to Plaintiff and the Class,  
8 who lost money or property by paying for the Coffee Products.

9 43. Additionally, Defendant's fraudulent practice will continue to mislead its  
10 customers for the simple reason that it is virtually impossible for consumers to know if  
11 Defendant has stopped misrepresenting the serving yield of its Coffee Products until *after*  
12 the purchase is made. At the very least, consumers would have to perform copious  
13 mathematical calculations *in store* before purchasing a Coffee Product to determine if the  
14 "Makes Up To \_\_\_ Cups" statement was accurate. Accordingly, the risk of harm to Plaintiff,  
15 the Class, and the public is ongoing.

16 ***"Unlawful" Prong***

17 44. A business act or practice is "unlawful" under the UCL if it violates any other  
18 law or regulation.

19 45. Defendant's actions, as alleged herein, constitute violations of the Consumer  
20 Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.* (the "CLRA"). Particularly,  
21 Defendant has unlawfully marketed and advertised the Coffee Products in violation of CAL.  
22 CIV. CODE §§ 1770(a)(5) and 1770(a)(9), discussed further below in Plaintiff's Third Cause  
23 of Action.

24 46. Additionally, Defendant's actions, as alleged herein, constitute violations of  
25 the California's False Advertising Law, CAL. Bus. & Prof. Code § 17500, *et seq.*, (the  
26 "FAL"), discussed further below in Plaintiff's Second Cause of Action.

27 47. Each of Defendant's unfair, fraudulent, and unlawful practices enumerated  
28 above was the direct and proximate cause of financial injury to Plaintiff and the Class.

1 Defendant has unjustly benefitted as a result of its wrongful conduct. Plaintiff and Class  
2 Members are accordingly entitled to have Defendant disgorge profits and restore to  
3 Plaintiff and Class Members all monies wrongfully obtained by Defendant as a result of  
4 the conduct as alleged herein.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF FALSE ADVERTISING LAW (“FAL”)**  
7 **CAL. Bus. & Prof. Code § 17500, *et seq.***

8 48. Plaintiff repeats and re-alleges the allegations contained in every preceding  
9 paragraph as if fully set forth herein.

10 49. Plaintiff has standing to pursue this claim because Plaintiff has suffered  
11 injury-in-fact and has lost money or property as a result of Defendant’s false advertising.  
12 Specifically, Plaintiff purchased the Folgers French Roast Coffee Products for his own  
13 personal consumption. In doing so, Plaintiff relied upon the false representations that the  
14 Coffee Products would produce more servings than they actually did. Plaintiff spent  
15 money in the transaction that he otherwise would not have spent had he known the truth  
16 about Defendant’s advertising claims.

17 50. Defendant violated CAL. Bus. & Prof. Code § 17500 by publicly  
18 disseminating false, misleading, and unsubstantiated advertisements regarding the Coffee  
19 Products as alleged hereinabove.

20 51. Defendant’s false and misleading advertisements were disseminated to  
21 increase the sales of the Coffee Products.

22 52. Defendant knew or should have known its advertisements for the Coffee  
23 Products were false and/or misleading.

24 53. Defendant knew or should have known that consumers, including Plaintiff  
25 and Class Members, would believe the Coffee Products would produce the number of  
26 servings prominently advertised on the Coffee Products if consumers followed the back  
27 panel serving instructions.  
28

1           54. Plaintiff and members of the Class have suffered harm as a result of these  
2 violations of the FAL because they have paid monies for the Coffee Products that they  
3 otherwise would not have paid but for Defendant's false and misleading statements.

4           55. Plaintiff and the members of the Class seek an order awarding Class-wide  
5 restitution of all monies and disgorgement of profits wrongfully acquired by Defendant as  
6 a result of the conduct alleged hereinabove and Defendant's failure to disclose the existence  
7 and significance of said misrepresentations.

8                                   **THIRD CAUSE OF ACTION**

9                           **VIOLATION OF CONSUMER LEGAL REMEDIES ACT ("CLRA")**  
10                           **CAL. CIV. CODE § 1750, *et seq.***

11           56. Plaintiff repeats and re-alleges the allegations contained in every preceding  
12 paragraph as if fully set forth herein.

13           57. Plaintiff has standing to pursue this claim because Plaintiff has suffered  
14 injury-in-fact and has lost money or property as a result of Defendant's unlawful business  
15 practices. Specifically, Plaintiff purchased the Folgers French Roast Coffee Products for  
16 his own personal consumption. In doing so, Plaintiff relied upon the false representations  
17 that the Coffee Products would produce more servings than they actually did. Plaintiff  
18 spent money in the transaction that he otherwise would not have spent had he known the  
19 truth about Defendant's advertising claims.

20           58. The CLRA was enacted to protect consumers against unfair and deceptive  
21 business practices. The CLRA applies to Defendant's acts and practices because the Act  
22 covers transactions involving the sale of goods to consumers.

23           59. Plaintiff and the members of the Class are "consumers" within the meaning  
24 of CAL. CIV. CODE § 1761(d) and they engaged in "transactions" within the meaning of  
25 CAL. CIV. CODE §§ 1761(e) and 1770, including the purchases of the Coffee Products.

26           60. Defendant is a "person" under CAL. CIV. CODE § 1761(c).

27           61. The Coffee Products are "goods" under CAL. CIV. CODE § 1761(a).  
28

62. Defendant's unfair and deceptive business practices were intended to and did result in the sale of the Coffee Products.

63. Defendant violated the CLRA by engaging in the following unfair and deceptive acts and practices:

§ 1770(a)(5) Representing that the Coffee Products have characteristics . . . which they do not have.

§ 1770(a)(9) Advertising goods or services with intent not to sell them as advertised.

64. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and the Class Members suffered injury and damages in an amount to be determined at trial.

65. On information and belief, Defendant's actions were willful, wanton, and fraudulent.

66. On information and belief, Defendant's officers, directors, and/or managing agents authorized the use of the misleading statements and material omissions regarding the Coffee Products.

67. Plaintiff has concurrently filed the declaration of venue required by CAL. CIV. CODE § 1780(d) with this Complaint.

68. On May 5, 2020, Plaintiff, through counsel, sent a CLRA demand letter to Defendant that provided notice of Defendant's violation of the CLRA and demanded Defendant correct, repair, replace, or otherwise rectify the unlawful, unfair, false, and deceptive practices complained of herein. The letter also stated that if Defendant refused to do so, Plaintiff would file a complaint seeking damages in accordance with the CLRA. If Defendant does not respond to Plaintiff's letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782, Plaintiff will amend his complaint to seek actual, punitive, and statutory damages, as appropriate against Defendant.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays on behalf of himself and all others similarly situated, for judgment against Defendant as follows:



1           A.     Certifying the Class as requested herein, appointing Plaintiff as Class  
2 Representative, and appointing his counsel as Class Counsel;

3           B.     Ordering Defendant to disgorge and make restitution of all monies  
4 Defendant acquired by means of the unlawful practices set forth above;

5           C.     Awarding declaratory and injunctive relief as permitted by law or  
6 equity, including: enjoining Defendant from continuing the unlawful practices as set  
7 forth herein, and directing Defendant to identify, with Court supervision, victims of  
8 its conduct and pay them all money it is required to pay;

9           D.     Ordering Defendant to engage in a corrective advertising campaign;

10          E.     Awarding Plaintiff and Class Members their costs and expenses  
11 incurred in the action, including reasonable attorney's fees; and

12          F.     Providing such further relief as may be just and proper.

13                   **VIII.     DEMAND FOR JURY TRIAL**

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

15          Dated: May 5, 2020

**CARLSON LYNCH, LLP**

16                   By: /s/ Scott G. Braden

17                   Scott G. Braden (CA 305051)

18                   sbraden@carlsonlynch.com

19                   Todd D. Carpenter (CA 234464)

20                   tcarpenter@carlsonlynch.com

21                   1350 Columbia St., Ste. 603

22                   San Diego, CA 92101

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24                   Fax: (619) 756-6990

25                   Attorneys for Plaintiff and the Class

## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS**

RAMON IBARRA, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

CARLSON LYNCH, LLP,  
1350 Columbia St. Ste. 603, San Diego, California 92101  
(619) 762-1900

**DEFENDANTS**

THE FOLGER COFFEE COMPANY, an Ohio corporation, and DOES 1-20, inclusive,

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'20CV0850 L BLM

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

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

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

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

**VI. CAUSE OF ACTION**

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

28 U.S.C. § 1332(d) and 28 U.S.C. § 1391(b)(2)

Brief description of cause:

Violations of: Cal. Bus. & Prof. Code §17200, et seq., §17500, et seq., & Cal. Civ. Code §1750, et seq.,

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

05/05/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**CARLSON LYNCH, LLP**

Todd D. Carpenter (CA 234464)

tcarpenter@carlsonlynch.com

Scott G. Braden (CA 305051)

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San Diego, CA 92101

Tel: (619) 762-1900

Fax: (619) 756-6991

*Attorneys for Plaintiff and the Class*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RAMON IBARRA, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

THE FOLGER COFFEE COMPANY, an  
Ohio corporation, and DOES 1-20,  
inclusive,

Defendants.

Case No.: **'20CV0850 L BLM**

**CLASS ACTION**

**DECLARATION IN SUPPORT OF  
JURISDICTION**

I, Todd D. Carpenter, declare under penalty of perjury the following:

1. I am an attorney duly licensed to practice before all of the courts in the State of California. I am a partner and part-owner of Carlson Lynch, LLP and counsel of record for Plaintiff in the above-entitled action.

2. Plaintiff Ramon Ibarra ("Plaintiff") resides in the County of San Diego.

3. Defendant The Folger Coffee Company has done, and is doing, business in the County of San Diego. Such business includes the marketing, distributing, and retail and online sales of ground coffee.

4. Plaintiff Ramon Ibarra purchased three cannisters of Folgers French Roast, Med-Dark, 210 Cups, from Garden Farms Market in Lakeside, California during December 2019.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed this 5<sup>th</sup> day of May in San Diego, California.

4 **CARLSON LYNCH, LLP**

5 By: /s/ Todd D. Carpenter

6 Todd D. Carpenter (CA 234464)

7 tcarpenter@carlsonlynch.com

8 Scott G. Braden (CA 305051)

9 sbraden@carlsonlynch.com

10 1350 Columbia St., Ste. 603

11 San Diego, CA 92101

12 Tel: (619) 762-1900

13 Fax: (619) 756-6990

14 *Attorneys for Plaintiff and the Class*



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Folgers Canisters Produce Fewer Cups of Coffee than Labels Advertise, Class Action Claims](#)

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