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CV 15 1624

AMON, CH.J.

SCANLON, M.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KYEONG JAE LEE, LINGXI KONG, NEIL STEVENS, SHUTING HUANG, JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN), JOHN DOE (NEW JERSEY), JOHN DOES 1-100, on behalf of themselves and others similarly situated,

Plaintiffs,

- against -

STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY

Defendant.

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Case No.

FILED
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2015 MAR 27 PM 1:01
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs KYEONG JAE LEE, LINGXI KONG, NEIL STEVENS, SHUTING HUANG, JOHN DOE (ILLINOIS), JOHN DOE (MICHIGAN), JOHN DOE (NEW JERSEY)and JOHN DOES 1-100, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Complaint against the Defendant, allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

NATURE OF THE ACTION

1. This is a consumer protection action arising out of deceptive and otherwise improper business practices that Defendant, STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY (hereinafter "Starbucks" or "Defendant"), engaged in with respect to the packaging of their bottled Frappuccino® and Iced Coffee products, which are packaged in glass bottles and regularly sold at pharmacies, convenience stores, grocery stores, and Starbucks Coffee stores. The Products are sold as follows:

PRODUCT	FLAVOR[1]
Starbucks® Bottled Frappuccino® Coffee Drink (9.5 oz) ("Frappuccino® Products")	Caramel
	Coffee
	Dark Chocolate Mocha
	Mocha
	Mocha Light
	Vanilla
	Vanilla Light
Starbucks® Iced Coffee (11 oz) ("Iced Coffee Products")	Caramel
	Iced Coffee + Milk
	Low Calorie
	Vanilla

(Frappuccino® Products and Iced Coffee Products, together collectively referred herein as the "Products").

2. Defendant manufactures, markets and sells the Products with non-functional slack-fill in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 403(d) (21 U.S.C. 343(d)), the Code of Federal Regulations Title 21 part 100, *et. seq.*, as well as state laws prohibiting misbranded food of the fifty states and the District of Columbia, which impose requirements identical to federal law.

[1] The flavors listed in the above table is only intended to be an incomprehensive list of all the flavors of the Products sold in all fifty states and the District of Columbia.

3. Upon information and belief, Defendant sold and continue to sell the Products with non-functional slack-fill during the class period.

4. Images of the Products in various flavors are provided herein under **EXHIBIT A**. Regardless of the different sizes and shapes of the glass bottle containers, however, the bottleneck portion of the Products are invariably covered with non-transparent wrappings so that Plaintiffs and Class members cannot see the slack-fill in the bottle. See below for an example of the slack-filled Products. The size of the bottles in comparison to the volume of the Products contained therein makes it appear as Plaintiffs and Class members are buying more than what is actually being sold.

5. Plaintiffs and Class members viewed Defendant's misleading Product packaging, reasonably relied in substantial part on the representations and were thereby deceived in deciding to purchase the Products for a premium price.

6. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the "Class Period"), purchased for consumption and not resale the Products.

7. During the Class Period, Defendant manufactured, marketed and sold the Products throughout the United States. Defendant purposefully sold the Products with non-functional slack-fill.

8. Defendant violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.;*
b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.;*
c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.;*
d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.;*
e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.,* and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.;*
f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.;*
g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.;*
h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.;*
i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.;*
j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.;*
k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.;*
l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.,* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.;*
m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.;*
n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.;*
o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.;*
p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.;*
q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.;*
r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.,* and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.;*
s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.;*
t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq,,* and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.,*
u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.;*
v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
w. Michigan Consumer Protection Act, § § 445.901, *et seq.;*
x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.;*
y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.;*
z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.;*
aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.;*

bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.,* and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.;*
cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.;*
dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq. ;*
ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.;*
ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq. ;*
gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.;*
hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.;*
ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.;*
jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.;*
kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.;*
ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.;*
mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.;*
nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.;*
oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.;*
pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.;*
qq. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.;*
rr. Texas Stat. Ann. §§ 17.41, *et seq.,* Texas Deceptive Trade Practices Act, *et sep.;*
ss. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.;*
tt. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.;*
uu. Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.;*
vv. Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.;*
ww. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.;*
xx. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.;*
yy. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

9. Defendant has deceived Plaintiffs and other consumers nationwide by mischaracterizing the size of their Products. Defendant has been unjustly enriched as a result of their conduct. Through these unfair and deceptive practices, Defendant has collected millions of dollars from the sale of their Products that they would not have otherwise earned. Plaintiffs bring this action to stop Defendant's misleading practice.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative

class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

11. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C § 1331 because it arises under the laws of the United States.

12. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

13. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

14. The Court has personal jurisdiction over Defendant because their Products are advertised, marketed, distributed and sold throughout New York State; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendant is authorized to do business in New York State; and Defendant has sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

15. Venue is proper in this district pursuant to 28 U.S.C § 1391(a) and (b) because a substantial part of the events giving rise to Plaintiff KONG's claims occurred in this District, and Defendant is subject to personal jurisdiction in this District. Plaintiff KONG purchased Defendant's Products in Queens County. Moreover, Defendant distributed, advertised and sold the Products, which are the subject of the present Complaint, in this District.

PARTIES

16. Plaintiff KYEONG JAE LEE is, and at all relevant times hereto has been a citizen of the state of New York and resides in New York County. Plaintiff KYEONG JAE LEE has purchased the Iced Coffee Products for personal consumption within the State of New York. Plaintiff KYEONG JAE LEE purchased the Products at convenience stores, supermarkets, and pharmacies located throughout New York County, including but not limited to Duane Reade. Specifically, within the 12-month period prior to the filing of this Complaint, Plaintiff LEE purchased a "Coffee + Milk" flavored Iced Coffee Product at a Duane Reade store in New York, New York. Plaintiff LEE purchased the Products for the premium price of $3.50 (or more), and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

17. Plaintiff LINGXI KONG is, and at all relevant times hereto has been, a citizen of the state of New York and resides in Queens County. Plaintiff KONG has purchased the Frappuccino® Products for personal consumption within the State of New York. Plaintiff KONG purchased the Frappuccino® Products at convenience stores, supermarkets, and pharmacies located throughout Queens County, including but not limited to Duane Reade. Specifically, within the 12-month period prior to the filing of this Complaint, Plaintiff KONG purchased a Mocha flavored Frappuccino® Product at a Starbucks Coffee store in the Bayside area of Queens, New York. Plaintiff KONG purchased the Products at a premium price of $3.50 (or more) and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

18. Plaintiff NEIL STEVENS is, and at all relevant times hereto has been a citizen of the state of California and resides in Pasadena, California. Plaintiff STEVENS has purchased the Frappuccino® Products and the Iced Coffee Products for personal consumption within the State of California from Starbucks Coffee stores, convenience stores, supermarkets and pharmacies. Specifically, within the 12-month period prior to the filing of this Complaint, Plaintiff

STEVENS purchased multiple Mocha flavored Frappuccino® Products and multiple Iced Coffee Products from Starbucks Coffee Stores and a Target store, all located in Pasadena, California. Plaintiff STEVENS purchased the Products at a premium price of $3.50 (or more) and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

19. Plaintiff SHUTING HUANG is, and at all relevant times hereto has been a citizen of the state of Florida and resides in Wellington, Florida. Plaintiff SHUTING HUANG has purchased the Frappuccino® Products for personal consumption within the State of Florida from Starbucks Coffee stores, convenience stores, supermarkets and pharmacies. Specifically, within the 12-month period prior to the filing of this Complaint, Plaintiff SHUTING HUANG purchased the Mocha flavored Frappuccino® Products from Target stores and Starbucks Coffee stores located in Wellington, Florida. Plaintiff HUANG purchased the Products at a premium price of $3.50 (or more) and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

20. Plaintiff JOHN DOE (ILLINOIS) is, and at all relevant times hereto has been a citizen of the state of Illinois. Plaintiff JOHN DOE (ILLINOIS) has purchased the Products for personal consumption within the State of Illinois. Plaintiff JOHN DOE (ILLINOIS) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

21. Plaintiff JOHN DOE (MICHIGAN) is, and at all relevant times hereto has been a citizen of the state of Michigan. Plaintiff JOHN DOE (MICHIGAN) has purchased the Products for personal consumption within the State of Michigan. Plaintiff JOHN DOE (MICHIGAN) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

22. Plaintiff JOHN DOE (NEW JERSEY) is, and at all relevant times hereto has been a citizen of the state of New Jersey. Plaintiff JOHN DOE (NEW JERSEY) has purchased the Products for personal consumption within the State of New Jersey. Plaintiff JOHN DOE (NEW JERSEY) purchased the Products at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein.

23. Plaintiffs JOHN DOES 1-100 are, and at all times relevant hereto has been, citizens of the any of the fifty states and the District of Columbia. During the Class Period, Plaintiffs JOHN DOES 1-100 purchased Products for personal consumption within the United States. Plaintiffs purchased the Products at a premium price and were financially injured as a result of Defendant's deceptive conduct as alleged herein.

24. Defendant STARBUCKS CORPORATION is a corporation organized under the laws of Washington with its headquarters at 2401 Utah Avenue South, Suite 800, Seattle, Washington 98134, and an address for service of process at United States Corporation Company, 80 State Street, Albany, New York 12207. Defendant manufactured, packaged, distributed, advertised, marketed and sold the Misbranded Products to millions of customers nationwide, including in New York, California, Texas, Florida, Illinois, Pennsylvania, New Jersey, and Michigan.

FACTUAL ALLEGATIONS

Identical Federal and State Law Prohibit Misbranded Foods with Nonfunctional Slack-Fill

25. Under the FDCA, 21 U.S.C. § 343(d), a food shall be deemed to be misbranded "[i]f its container is so made, formed, or filled as to be misleading."

26. Additionally, pursuant to 21 C.F.R. § 100.100:

> In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other non-mandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

None of the above safe-harbor provisions applies. Defendant intentionally incorporated nonfunctional slack fill in its packaging of the Products in order to mislead the consumers, including Plaintiffs and members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) ("Misleading consumers is not a valid reason to package a product with slack fill. *See* 21 C.F.R. § 100.100(a)(1–6).").

27. Food labeling law and regulations of the fifty states and the District of Columbia impose requirements which mirror federal law. For example, New York Agm. Law § 201 specifically provides that "[f]ood shall be deemed to be misbranded ... If its container is so made, formed, colored or filled as to be misleading." Moreover, Part 259.1 of Title 1 of the New

York Codes, Rules and Regulations of the State of New York (1 NYCRR § 259.1), incorporates by reference the regulatory requirements for food labeling under the FDCA:

> "For the purpose of the enforcement of article 17 of the Agriculture and Markets Law, and except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner, the commissioner hereby adopts the current regulations as they appear in title 21 of the *Code of Federal Regulations* (revised as of April 1, 2013) ... in the area of food packaging and labeling as follows: ... (2) Part 100 of title 21 of the *Code of Federal Regulations* [21 C.F.R. 100 et seq.], containing Federal definitions and standards for food packaging and labeling *General* at pages 5-10...." 1 NYCRR § 259.1(a)(2).

28. Similarly, California's Business & Professions Code § 12606.2 provides that "No food containers shall be made, formed, or filled as to be misleading." CA B&P Code 12606.2(b). Further, "[a] container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill." CA B&P Code 12606.2(c).

Defendant's Products Contain Non-Functional Slack-Fill

29. Defendant manufactures, packages, distributes, markets, and sells coffee drink products under the well-known household brand name Starbucks®. The Products are sold at Defendant's Starbucks Coffee stores, as well as most supermarket chains, convenience stores, pharmacies and major retail outlets throughout the United States, including but not limited to Wal-Mart, Costco, CVS, Walgreens, Target and Amazon.com.

30. Defendant employed slack-filled packaging containing non-functional slack-fill to mislead customers into believing that they were receiving more Products than they actually were.

31. Non-functional slack-fill is the difference between the actual capacity of a container and the **volume** of product contained within. Plaintiffs were (and a consumer would reasonably be) misled about the volume of the product contained within the container in comparison to the size of the Products' packaging. The size of the bottle in relation to the actual

volume of the tablets contained therein was intended to mislead the consumer into believing the consumer was getting more of the Product than what was actually in the container.

32. The Iced Coffee Products purchased by Plaintiffs are packaged in a glass bottle with an actual capacity of approximately 370 ml in volume. However, the Iced Coffee Product contains merely 325 ml of coffee content, or 87.8% of the bottle's actual capacity. Thus, each bottle of the Iced Coffee Products has a non-functional slack-fill of approximately 12.2% of its actual capacity.

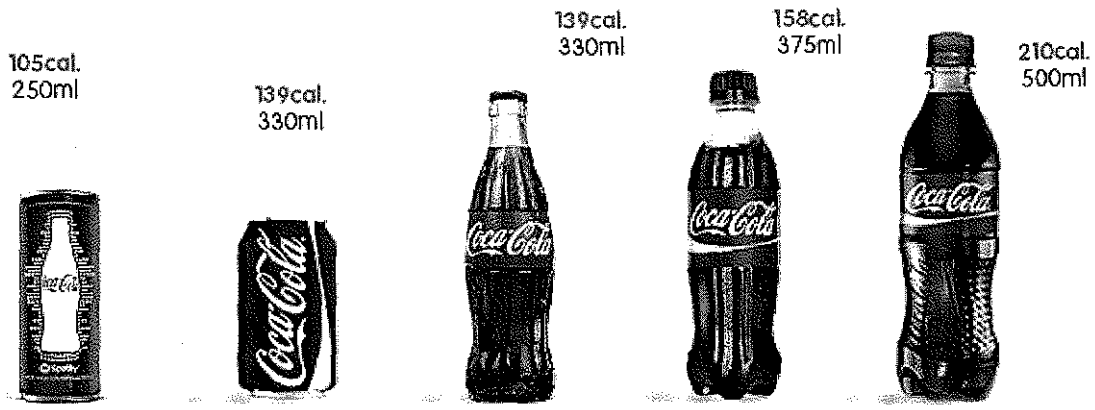
33. The Frappuccino® Products purchased by Plaintiffs are packaged in a glass bottle with an actual capacity of approximately 320 ml in volume. However, the Frappuccino Product contains merely 281 ml coffee content, or 87.5% of the bottle's actual capacity. Thus, each bottle of the Frappuccino Product has a non-functional slack-fill which accounts for approximately 12.5% of its actual capacity.

34. The over 12% slack-fill is more than three times the normal slack contained in similar non-alcoholic beverages packaged in glass bottles. For example, in the Herbert's Lemonade Strawberry Lemonade (*see* **EXHIBIT B**), the empty space in the glass bottle is about 20 ml or a mere 3.9% of the actual capacity of the glass bottle.[2]

35. Packaged non-alcoholic beverages are routinely sold at different prices depending on the volume of the product. The volume difference between a can of Coca Cola (330ml) and a small plastic-bottle Coca Cola (375ml) is approximately 13.6% (see below). In other words, the Products contain non-functional slack-fill that is approximately equivalent to the difference in volume between a small plastic bottle of Coca Cola and a can of Coca Cola, which is significant

[2] The actual capacity of the Herbert's Lemonade bottle is approximately 510 ml and the liquid content is approximately 490 ml. As such, the slack in the Herbert's Lemonade is approximately 20ml or 20/510 = 3.9% of the actual capacity. *See* **EXHIBIT B.**

and non-negligible. The pricing difference due to the difference in volume is also significant: $1.13 for a 375 ml bottle of Coca-Cola and $0.75 for a 330ml can of Coca-Cola.[3]



http://www.coca-cola.co.uk/content/en_GB/img/health/AM_706x264_packaging_sizes.jpg

36. Despite having an over 12% slack-fill, the glass bottles used in the packaging of the Products are uniformly covered with non-transparent plastic wrappings in the bottleneck area so that consumers cannot see the actual slack-fill space. The Products were designed by Defendant to give the impression that there is more content than actually packaged. *See* **EXHIBIT A**. In comparison, other beverages packaged in similar glass bottles are entirely transparent and customers are on notice and can easily determine how much beverage content they are actually receiving. *See* **EXHIBIT B**.

37. The size of the bottles in relation to the volume of the Products actually contained therein gives the false impression that the consumer is buying more than they are actually receiving.

38. Pictures of the Products and packaging are shown in **EXHIBIT A**. Because the bottleneck portion of the Products are covered by non-transparent plastic wrappings, consumers cannot see the non-functional slack-fill in the glass bottles. **EXHIBIT A** shows that the contents

[3] Pricing information obtained from http://www.mysupermarket.co.uk/ on January 30, 2015 and converted to US Dollar based on foreign exchange rate published on Google Finance on the same date.

of the Products do not fill up the entirety of the glass bottles. In fact, each bottle contains significant non-functional slack-fill in violation of federal and state laws.

39. Plaintiffs and the members of the Class relied on the sizes of the glass bottles to believe that the entire volume of the packaging of the Products would be filled to capacity, particularly since the empty neck space was purposely concealed by Defendant. Plaintiffs and the members of the Class' reasonably relied on the expectation that Defendant's Products would not contain slack-fill.

Plaintiffs Were Injured as a Result of Defendant's Misleading and Deceptive Conduct

40. Defendant's Product packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendant's misrepresentations are part of its systematic Product packaging practice.

41. Plaintiffs and Class members paid the full price of the Products and received less of what Defendant represented they would be getting due to the non-functional slack-fill in the Products. In order for Plaintiffs and Class members to be made whole, Plaintiffs and Class members would have to receive enough of the coffee beverage so that there is no non-functional slack-fill or have paid less for the Products. In the alternative, Plaintiffs and members of the Class are damaged by the percentage of non-functional slack-fill relative to the purchase price they paid.

42. There is no practical reason for the non-functional slack-fill used to package the Products other than to mislead consumers as to the actual volume of the Products being purchased by consumers.

43. In reliance on Defendant's deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that contain non-functional slack-fill.

Moreover, and Class members have paid a premium for the Products over other ready-to-drink coffee products sold on the market (see below).

BRAND	QUANTITY	PRICE	SELLER
Java Monster Energy®	15 ounce	$1.57 per bottle	Amazon
Real Beanz	9.5 ounce	$2.05 per bottle	Amazon
illy issimo®	8.45 ounce	$1.60 per bottle	Amazon
Starbucks® Frappuccino®	**9.5 ounce**	**$2.33 per bottle[4]**	**Amazon**
Starbucks® Iced Coffee	**11 ounce**	**$2.50 per bottle**	**Amazon**

44. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled. Consumer protection laws of the fifty states and the District of Columbia have substantially identical requirements as the FDCA.

45. Defendant's packaging and advertising of the Misbranded Products violate various state laws against misbranding. For example, New York State law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA § 403, 21 U.S.C. 343. Under New York Agm. Law § 201, the law specifically provides that "[f]ood shall be deemed to be misbranded ... If its container is so made, formed, colored or filled as to be misleading." Similarly, California's Business & Professions Code § 12606.2 provides that "No food containers shall be made, formed, or filled as to be misleading."

[4] The Products are sold at a lower price on Amazon.com than in physical stores. The Frappuccino® Products are regularly sold approximately $2.99 per bottle at pharmacies such as Duane Reade, and approximately $3.50 at Starbucks Coffee stores in the New York metro area.

CA B&P Code 12606.2(b). Further, "[a] container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill." CA B&P Code 12606.2(c).

46. Slack fill is defined as the difference between the actual capacity of a container and the volume of product contained therein.

47. Defendant's Products are misbranded under state consumer protection laws and state food and drug laws because they misled Plaintiffs and Class members about the volume of the Products in comparison to the size of the Products' packaging. The size of the containers in relation to the actual amount of the Products contained therein gives the false impression that the consumer is buying more than they are actually receiving.

48. The types of misrepresentations made above would be considered by a reasonable consumer when deciding to purchase the Products. A reasonable person would attach importance to whether Defendant's Products are "misbranded," *i.e.,* not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

49. Plaintiffs and Class members did not know, and had no reason to know, that the Products contained non-functional slack-fill.

50. Defendant's Product packaging was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. In reliance on Defendant's Product packaging, Plaintiffs and Class members believed that they were getting more of the Products than was actually being sold. Had Plaintiffs and Class members known Defendant's Products contained non-functional slack-fill, they would not have bought the Products.

51. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products contained non-functional slack-fill as set forth herein, and would not have bought the Products had they known the truth about them.

52. Defendant's non-functional slack-fill packaging is misleading and in violation of the FDCA and consumer protection laws of each of the 50 states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

53. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

54. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with non-functional slack-fill and paid prices they otherwise would not have paid.

CLASS ACTION ALLEGATIONS

55. Plaintiffs brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons or entities in the United States who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

56. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through the appropriate discovery, Plaintiffs believe that there are thousands of members in the proposed Class. Other members of the Class may be identified from records maintained by Defendant and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

57. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

58. Plaintiffs will fairly and adequately protect the interests of the members of the Class in that Plaintiffs have no interests antagonistic to those of the other members of the Class. Plaintiffs have retained experienced and competent counsel.

59. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendant would likely unfairly receive millions of dollars or more in improper charges.

60. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the common questions of law fact to the Class are:

i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Products to Plaintiffs and Class members, using false, misleading and/or deceptive packaging and labeling;

ii. Whether Defendant's actions constitute violations of 21 U.S.C. § 343(d);

iii. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of Products;

iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of Products constituted an unfair, unlawful or fraudulent practice;

v. Whether the packaging of the Products during the relevant statutory period constituted unlawful non-functional slack-fill;

vi. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;

vii. Whether the members of the Class have sustained damages as a result of Defendant's wrongful conduct;

viii. Whether Defendant purposely covered the glass bottleneck so that Plaintiffs and Class members would not be able to see the amount of slack-fill contained in the Products;

ix. The appropriate measure of damages and/or other relief;

x. Whether Defendant has been unjustly enriched by their scheme of using false, misleading and/or deceptive labeling, packaging or misrepresentations, and;

xi. Whether Defendant should be enjoined from continuing their unlawful practices.

61. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

62. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

63. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

64. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

65. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

66. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

67. Plaintiffs LEE and KONG repeat and reallege each and every allegation contained above as if fully set forth herein and further alleges the following:

68. Plaintiffs LEE and KONG bring this claim individually and on behalf of the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, General Business Law ("NY GBL") § 349.

69. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

70. Under the New York Gen. Bus. Code § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 . . . claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

71. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold their Products in packaging resulting in slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349. Moreover, New York State law broadly prohibits the misbranding of foods in language identical to that found in regulations promulgated

pursuant to the FDCA § 403, 29 U.S.C. 343(d). Under New York Agm. Law § 201, "[f]ood shall be deemed to be misbranded ... If its container is so made, formed, colored or filled as to be misleading."

72. The foregoing deceptive acts and practices were directed at consumers.

73. Defendant should be enjoined from packaging their Products with slack-fill as described above pursuant to NY GBL § 349, New York Agm. Law § 201, and the FDCA, 21 U.S.C. § 343(d).

74. Plaintiffs LEE and KONG, on behalf of themselves and all others similarly situated, respectfully demands a judgment enjoining Defendant's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

75. Plaintiffs LEE and KONG repeat and reallege each and every allegation contained above as if fully set forth herein.

76. Plaintiffs LEE and KONG bring this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

77. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in her own name to enjoin such unlawful act or practice, an action to recover her actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

78. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misbranding their Products as seeming to contain more in the packaging than is actually included.

79. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Products in packages resulting in slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349, New York Agm. Law § 201 and the FDCA, 21 U.S.C. § 343(d) in that said Products are misbranded.

80. The foregoing deceptive acts and practices were directed at consumers.

81. Plaintiffs LEE and KONG and the other Class members suffered a loss as a result of Defendant's deceptive and unfair trade acts. Specifically, as a result of Defendant's deceptive and unfair acts and practices, Plaintiffs LEE and KONG and the other Class members suffered monetary losses associated with the purchase of Products, i.e., receiving less than the capacity of the packaging due to approximately 12% non-functional slack-fill in the Products. In order for Plaintiffs LEE and KONG and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

COUNT III

Violations of California's Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

82. Plaintiff NEIL STEVENS realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further alleges as follows:

83. Plaintiff NEIL STEVENS brings this claim individually and on behalf of the other members of the California Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1761(d).

84. Plaintiff NEIL STEVENS and California Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff NEIL STEVENS and the California Class members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d). Plaintiff NEIL STEVENS and the California Class members are not sophisticated experts with independent knowledge of corporate branding, labeling and packaging practices.

85. Products that Plaintiff NEIL STEVENS and other California Class members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

86. Defendant's actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

87. Defendant violated federal and California law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

88. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it misrepresents that the Products have quantities which they do not have.

89. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or services with intent not to sell them as advertised." By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9), because Defendant's conduct constitutes unfair methods of competition and unfair or fraudulent acts or practices, in that it advertises goods with the intent not to sell the goods as advertised.

90. Plaintiff NEIL STEVENS and the California Class members are not sophisticated experts about the corporate branding, labeling and packaging practices. Plaintiff NEIL STEVENS and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.

91. Plaintiff NEIL STEVENS and the California Class suffered injuries caused by Defendant because (a) they would not have purchased the Products on the same terms absent Defendant's illegal and misleading conduct as set forth herein; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive packaging with nonfunctional slack-fill; and (c) the Products did not have the quantities as promised.

92. On or about January 26, 2015, prior to filing this action, a CLRA notice letter was served on Defendant which complies in all respects with California Civil Code § 1782(a). Plaintiff NEIL STEVENS sent STARBUCKS CORPORATION, on behalf of himself and the proposed Class, a letter via certified mail, return receipt requested, advising Defendant that they are in violation of the CLRA and demanding that they cease and desist from such violations and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff NEIL STEVENS's letter is attached hereto as **EXHIBIT C**.

93. Wherefore, Plaintiff NEIL STEVENS seeks damages, restitution, and injunctive relief for these violations of the CLRA.

COUNT IV

Violation of California's Unfair Competition Law, California Business & Professions Code §§ 17200, et seq.

94. Plaintiff NEIL STEVENS realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further allege as follows:

95. Plaintiff NEIL STEVENS brings this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.

96. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising …."

97. Defendant violated federal and California law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

98. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL by violating Section 403(r) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(d), California Health & Safety Code § 110690, the CLRA, and other applicable law as described herein.

99. Defendant's business practices, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to consumers, and its failure to comply with the FDCA and parallel California labeling requirements and deceptive advertising concerning the quantity of the Products offends the public policy advanced by the FDCA to

ensure that "foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A).

100. Defendant violated the "fraudulent" prong of the UCL by misleading Plaintiff NEIL STEVENS and the California Class to believe that the Products contained more contents than they actually do and that such packaging and labeling practices were lawful, true and not intended to deceive or mislead the consumers.

101. Plaintiff NEIL STEVENS and the California Class members are not sophisticated experts about the corporate branding, labeling, and packaging practices of the Products. Plaintiff NEIL STEVENS and the California Class acted reasonably when they purchased the Products based on their belief that Defendant's representations were true and lawful.

102. Plaintiff NEIL STEVENS and the California Class lost money or property as a result of Defendant's UCL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations; and (c) the Products did not have the quantities as promised.

COUNT V

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, California Business & Professions Code §§ 17500, et seq.

103. Plaintiff NEIL STEVENS realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further allege as follows:

104. Plaintiff NEIL STEVENS bring this claim individually and on behalf of the members of the proposed California Class for Defendant's violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

105. Under the FAL, the State of California makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

106. Defendant engaged in a scheme of offering misbranded Products for sale to Plaintiff NEIL STEVENS and the California Class members by way of packaging the Products with nonfunctional slack-fill. Such practice misrepresented the content and quantity of the misbranded Products. Defendant's advertisements and inducements were made in California and come within the definition of advertising as contained in Bus. & Prof. Code § 17500, et seq. in that the product packaging was intended as inducements to purchase Defendant's Products. Defendant knew that these statements were unauthorized, inaccurate, and misleading.

107. Defendant violated federal and California law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

108. Defendant violated § 17500, et seq. by misleading Plaintiff NEIL STEVENS and the California Class to believe that the packaging with nonfunctional slack-fill made about the Products were true as described herein.

109. Defendant knew or should have known, through the exercise of reasonable care that the Products were and continue to be misbranded, and that their representations about the quantity of the Products were untrue and misleading.

110. Plaintiff NEIL STEVENS and the California Class lost money or property as a result of Defendant's FAL violations because (a) they would not have purchased the Products on the same terms absent Defendant's illegal conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

COUNT VI

VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, Fla. Stat. Ann. § 501.201, et seq.

111. Plaintiff SHUTING HUANG realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

112. Plaintiff SHUTING HUANG brings this claim individually and on behalf of the Florida Class for Defendant's violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, et seq.

113. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") makes "unfair or deceptive acts or practices in the conduct or any trade or commerce" in Florida unlawful.

114. Throughout the Class Period, by advertising, marketing, distributing, and/or selling the Products with the packaging with nonfunctional slack-fill, to Plaintiff SHUTING HUANG and other Florida Class members, Defendant violated the FDUTPA by engaging in false advertising concerning the content and quantity of the Products.

115. Defendant has made and continue to make deceptive, false and misleading statements concerning the quantities of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its

quantities, as alleged herein. Defendant violated federal and Florida law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

116. Plaintiff SHUTING HUANG and other Florida Class members seek to enjoin such unlawful acts and practices as described above. Each of the Florida Class members will be irreparably harmed unless the unlawful actions of Defendant are enjoined in that they will continue to be unable to rely on the Defendant's packaging with nonfunctional slack-fill.

117. Had Plaintiff SHUTING HUANG and the Florida Class members known the misleading and/or deceptive nature of Defendant's claims, they would not have purchased the Products.

118. Plaintiff SHUTING HUANG and the Florida Class members were injured in fact and lost money as a result of Defendant's conduct of improperly packaging the Products with nonfunctional slack-fill. Plaintiff SHUTING HUANG and the Florida Class members paid for Defendant's premium priced Products, but received Products that were worth less than the Products for which they paid.

119. Plaintiff SHUTING HUANG and the Florida Class seek declaratory relief, enjoining Defendant from continuing to disseminate their false and misleading statements, actual damages plus attorney's fees and court costs, and other relief allowable under the FDUTPA.

COUNT VII

VIOLATION OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS § 505, et seq.

120. Plaintiff JOHN DOE (Illinois) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs and further alleges as follows:

121. Plaintiff JOHN DOE (Illinois) brings this claim individually and on behalf of the other members of the Illinois Class for violations of Illinois's Consumer Fraud and Deceptive Business Practice Act, ("ICFA"), 815 ILC § 505, et seq.

122. Plaintiff JOHN DOE (Illinois) and Illinois Class members are consumers who purchased the Products for personal, family or household purposes. Plaintiff JOHN DOE (Illinois) and the Illinois Class members are "consumers" as that term is defined by the ICFA, 815 ILC § 505/1(e) as they purchased the Products for personal consumption or of a member of their household and not for resale.

123. Products that Plaintiff JOHN DOE (Illinois) and other Illinois Class members purchased from Defendant were "merchandise" within the meaning of the ICFA, 815 ILC § 505/1(b).

124. Under Illinois law, 815 ILC § 505/2, "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." By engaging in the conduct set forth herein, Defendant violated and continues to violate § 505/2 of the ICFA, because Defendant's conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that it misrepresents that the Products have quantities which they do not have.

125. Defendant's packaging with nonfunctional slack-fill constitute a deceptive act or practice under the ICFA because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

126. Defendant intended that Plaintiff JOHN DOE (Illinois) and other members of the Illinois Class rely on their deceptive act or practice.

127. Defendant's deceptive act or practice occurred in the course of trade or commerce. "The terms "trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property...." 815 ILC § 505/1(f). Defendant's deceptive act or practice occurred in the advertising, offering for sale, sale, or distribution of the Products.

128. Plaintiff JOHN DOE (Illinois) and the Illinois Class suffered actual damage proximately caused by Defendant because (a) they would not have purchased the Products on the same terms absent Defendant's illegal and misleading conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a price premium for the Products due to Defendant's misrepresentations and deceptive packaging with nonfunctional slack-fill; and (c) the Products did not have the characteristics, benefits, or quantities as promised.

129. Wherefore, Plaintiff JOHN DOE (Illinois) seeks damages, restitution, and injunctive relief for these violations of the ICFA.

COUNT VIII

VIOLATION OF MICHIGAN'S CONSUMER PROTECTION ACT, MCL §§ 445.901. et seq.

130. Plaintiff JOHN DOE (Michigan) realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

131. Plaintiff JOHN DOE (Michigan) brings this claim individually and on behalf of the Michigan Class for Defendant's violations under the Michigan Consumer Protection Act, MCL §§ 445.901. *et seq.* (the "MCPA").

132. Defendant's actions constitute unlawful, unfair, deceptive and fraudulent actions/practices as defined by the MCPA, MCL §445.901, *et seq.*, as they occurred in the course of trade or commerce.

133. As part of its fraudulent marketing practices Defendant engaged in a pattern and practice of knowingly and intentionally making numerous false representations and omissions of material facts, with the intent to deceive and fraudulently induce reliance by Plaintiff JOHN DOE (Michigan) and the members of the Michigan Class. These false representations and omissions were uniform and identical in nature as they all represent that the Products contain more contents than they actually do.

134. Defendant has made and continue to make deceptive, false and misleading statements concerning the quantities of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its quantities, as alleged herein. Defendant violated federal and Michigan law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

135. Had Plaintiff JOHN DOE (Michigan) and the Michigan Class known the misleading and/or deceptive nature of Defendant's claims, they would not have purchased the Products. Defendant's acts, practices and omissions, therefore, were material to Plaintiffs' decision to purchase the Products at a premium price, and were justifiably relied upon by Plaintiffs.

136. The unfair and deceptive trade acts and practices have directly, foreseeably and proximately caused damage to Plaintiff JOHN DOE (Michigan) and other members of the Michigan Class.

137. The Defendant's practices, in addition, are unfair and deceptive because they have caused Plaintiff JOHN DOE (Michigan) and the Michigan Class substantial harm, which is not outweighed by any countervailing benefits to consumers or competition, and is not an injury consumers themselves could have reasonably avoided.

138. The Defendant's acts and practices have misled and deceived the general public in the past, and will continue to mislead and deceive the general public into the future, by, among other things, causing them to purchase Products with false and misleading statements concerning its content and quantity at a premium price.

139. Plaintiff JOHN DOE (Michigan) and the Michigan Class are entitled to preliminary and permanent injunctive relief ordering the Defendant to immediately cease these unfair business practices, as well as disgorgement and restitution to Plaintiff JOHN DOE (Michigan) and the Michigan Class of all revenue associated with their unfair practices, or such revenues as the Court may find equitable and just.

COUNT IX

VIOLATION OF NEW JERSEY'S CONSUMER FRAUD ACT, N.J.S.A.56:8-1, *et seq.*

140. Plaintiff JOHN DOE (New Jersey) realleges and incorporates herein by reference the allegations contained in all preceding paragraphs of this Complaint, as if fully set forth herein.

141. Plaintiff JOHN DOE (New Jersey) bring this claim individually and on behalf of the other members of the New Jersey Class for violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1, et seq.

142. At all relevant times, Defendant was and is a "person," as defined by N.J.S.A. 56:8-1(d).

143. At all relevant times, Defendant's Products constituted "merchandise," as defined by N.J.S.A. 56:8-1(c).

144. At all relevant times, Defendant's manufacturing, branding, labeling, packaging, sales and/or distribution of the Products at issue met the definition of "advertisement" set forth by N.J.S.A. 56:8-1(a).

145. At all relevant times, Defendant's manufacturing, branding, labeling, packaging, sales and/or distribution of the Products at issue met the definition of "sale" set forth by N.J.S.A. 56:8-1(e).

146. N.J.S.A. 56:8-2 provides that "[t]he act, use or employment by any person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, ...is declared to be an unlawful practice..."

147. Defendant has made and continue to make deceptive, false and misleading statements concerning the quantities of its Products, namely manufacturing, selling, marketing, packaging and advertising the Products with false and misleading statements concerning its quantities, as alleged herein. Defendant violated federal and New Jersey law because the Products contain nonfunctional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

148. As described in detail above, Defendant uniformly misrepresented to Plaintiff JOHN DOE (New Jersey) and each member of the New Jersey Class the Products' quantity by means of their branding, labeling and packaging.

149. Defendant has therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, branding, labeling, packaging, selling and distribution of the Products. Defendant has therefore violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq.

150. As a direct and proximate result of Defendant's improper conduct, Plaintiff JOHN DOE (New Jersey) and other members of the New Jersey Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for the Products than they would have, and/or by purchasing the Products which they would not have purchased, if the quantity of the Products had not been misrepresented, in amounts to be determined at trial.

COUNT X

NEGLIGENT MISREPRESENTATION
(All States and the District of Columbia)

151. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

152. Defendant, directly or through their agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class. Defendant, through their deceptive packaging of the Products, make uniform representations regarding the Products.

153. Defendant, as the manufacturers, packagers, labelers and initial sellers of the Products purchased by the Plaintiffs, had a duty to disclose the true nature of the Products and not sell the Products with non-functional slack-fill. Defendant had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendant actively concealed material facts from the Plaintiffs and Defendant made partial representations that are misleading because some other material fact has not been disclosed. Defendant's failure to disclose the information it had a duty to disclose constitutes material misrepresentations and materially misleading omissions which misled the Plaintiffs who relied on Defendant in this regard to disclose all material facts accurately and truthfully and fully.

154. Plaintiffs and members of the Class reasonably relied on Defendant's representation that their Product contains more product than actually packaged.

155. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

156. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

157. Plaintiffs and members of the Class would have acted differently had they not been misled – i.e. they would not have paid money for the Products in the first place.

158. Defendant has a duty to correct the misinformation they disseminated through the deceptive packaging of the Products. By not informing Plaintiffs and members of the Class, Defendant breached their duty. Defendant also profited financially as a result of this breach.

159. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

160. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.

161. Defendant acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

162. Plaintiffs and members of the Class are entitled to damages, including punitive damages.

COUNT XI

COMMON LAW FRAUD
(All States and the District of Columbia)

163. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

164. Defendant intentionally made materially false and misleading representations regarding the size of the Products.

165. Plaintiffs and members of the Class were induced by, and relied on, Defendant's false and misleading packaging, representations and omissions and did not know at the time that

they were purchasing the Products that they were purchasing Products that contained unlawful non-functional slack-fill.

166. Defendant knew or should have known of their false and misleading labeling, packaging and misrepresentations and omissions. Defendant nevertheless continued to promote and encourage customers to purchase the Products in a misleading and deceptive manner. Had Defendant adequately disclosed the true size of the Products, Plaintiffs and Class members would not have purchased the Products.

167. Plaintiffs and members of the Class have been injured as a result of Defendant's fraudulent conduct.

168. Defendant is liable to Plaintiffs and members of the Class for damages sustained as a result of Defendant's fraud. In order for Plaintiffs and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

COUNT XII

UNJUST ENRICHMENT
(All States and the District of Columbia)

169. Plaintiffs reallege and incorporate by reference the above paragraph as if set forth herein.

170. As a result of Defendant's deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Products, Defendant were enriched, at the expense of and members of the Class, through the payment of the purchase price for Defendant's Products.

171. Plaintiffs and members of the Class conferred a benefit on Defendant through purchasing the Products, and Defendant has knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on it.

172. Defendant will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

173. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that they received from Plaintiffs, and all others similarly situated, in light of the fact that the volume of the Products purchased by Plaintiffs and the Class, was not what Defendant purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs, and all others similarly situated, for selling their Products in packaging resulting in slack-fill. In order for Plaintiffs and Class members to be made whole, they need to receive either the price premium paid for the Products or a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendant as follows:

(A) For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;

(B) For an Order declaring the Defendant's conduct violates the statutes referenced herein;

(C) For an Order finding in favor of Plaintiffs and members of the Class;

(D) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

(E) For prejudgment interest on all amounts awarded;

(F) For an Order of restitution and all other forms of equitable monetary relief;

(G) For injunctive relief to repackage the Products without non-functional slack-fill as pleaded or as the Court may deem proper;

(H) For an Order awarding Plaintiffs and members of the Class their reasonable attorneys' fees and expenses and costs of suit; and

(I) For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: March 27, 2015

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

By: C.K. Lee, Esq.

EXHIBIT A

Starbucks® Vanilla Iced Coffee 11 oz

Starbucks® Iced Coffee + Milk 11 oz

Starbucks® Low Calorie Iced Coffee + Milk 11 oz

Starbucks® Caramel Iced Coffee 11 oz

Starbucks® Bottled Mocha Frappuccino® Coffee Drink 9.5 oz

Starbucks® Bottled Vanilla Frappuccino® Coffee Drink 9.5 oz

Starbucks® Bottled Coffee Frappuccino® Coffee Drink 9.5 oz

Starbucks® Bottled Mocha Light Frappuccino® Coffee Drink
9.5 oz

EXHIBIT B

Hubert's Lemonade Strawberry Lemonade 472ml

EXHIBIT C

LEE LITIGATION GROUP, PLLC

30 EAST 39TH STREET, SECOND FLOOR
NEW YORK, NY 10016
TEL: 212-465-1180
FAX: 212-465-1181
INFO@LEELITIGATION.COM

WRITER'S DIRECT: 212-465-1188
cklee@leelitigation.com

January 20, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Legal Department
Starbucks Coffee Company
2401 Utah Avenue South
Mail-Stop: S-FS-6
Seattle, WA 98134

Re: Demand Letter re:

Starbucks® Bottled Frappuccino® Coffee Drink and Starbucks® Iced Coffee

(together, the "Products")

To Whom It May Concern:

This demand letter serves as a notice and demand for corrective action on behalf of my client, Neil Stevens and all other persons similarly situated, arising from violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code § 1770, including but not limited to subsections (a)(5) and (9) and violations of consumer protection laws of each of the fifty states and the District of Columbia. This demand letter serves as notice pursuant to state laws concerning your deceptive and misleading Product packaging.

You have participated in the manufacture, marketing and sale of the Starbucks® Bottled Frappuccino® Coffee Drink and the Starbucks® Iced Coffee Products. The Products contain non-functional slack fill and violate the Federal Food Drug & Cosmetic Act ("FDCA") Section 403 (21 U.S.C. 343) and consumer protection laws of each of the fifty states and the District of Columbia. As a result, consumers are misled as to the volume of the Products.

Mr. Neil Stevens, a resident of California, purchased the Starbucks® Bottled Frappuccino® Coffee Drink and the Starbucks® Iced Coffee Products and is acting on behalf of a class defined as all persons in each of the fifty states and the District of Columbia who purchased the Products (hereafter, the "Class").

To cure the defects described above, we demand that you (i) cease and desist from continuing to package the Products with non-functional slack fill; (ii) issue an immediate recall on any Products with non-functional slack fill; and (iii) make full restitution to all purchasers throughout the United States of all purchase money obtained from sales thereof.

We further demand that you preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to the following:

(i) All documents concerning the manufacture, labeling and packaging process for the Products;

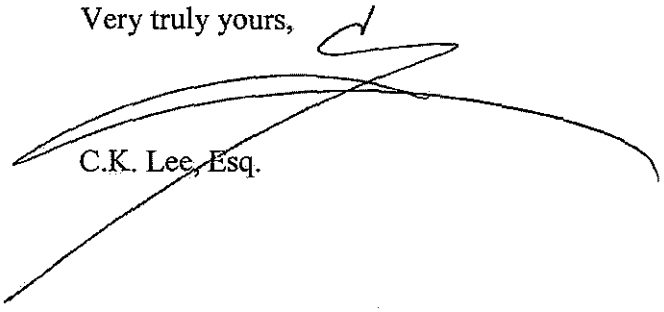
(ii) All communications with the U.S. Food and Drug Administration concerning the product development, labeling, packaging, marketing and sales of the Products;

(iii) All documents concerning the advertisement, marketing, or sale of the Products; and

(iv) All communications with customers concerning complaints or comments concerning the Products.

We are willing to negotiate to attempt to resolve the demands asserted in this letter. If you wish to enter into such discussions, please contact me immediately. If I do not hear from you promptly, I will conclude that you are not interested in resolving this dispute short of litigation. If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents promptly.

Very truly yours,



C.K. Lee, Esq.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Legal Department
Starbucks Coffee Company300 Park
2401 Utah Avenue South
Mail-Stop: S-FS-6
Seattle, WA 98134

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☑ Agent
☐ Addressee

B. Received by (Printed Name)
E. Gulden

C. Date of Delivery
JAN 20 2015

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

3. Service Type
☐ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7014 2870 0000 2949 7826

PS Form 3811, July 2013 Domestic Return Receipt

7014 2870 0000 2949 7826

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

SEATTLE WA 98134 OFFICIAL USE

Postage	$ $0.49	0010
Certified Fee	$3.30	14
Return Receipt Fee (Endorsement Required)	$2.70	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.49	01/20/2015

Sent To
Street & Apt. No., or PO Box No.
City, State, ZIP+4

Legal Department
Starbucks Coffee Company300 Park
2401 Utah Avenue South
Mail-Stop: S-FS-6
Seattle, WA 98134

PS Form 3800, June