

EXHIBIT A

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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN FRANCISCO**

22 SANDRA WALKER, an individual, on behalf
23 of herself and all others similarly situated;
24 Plaintiffs,
25 vs.
26 THE KROGER CO., a foreign corporation;
27 and DOES 1 through 100, inclusive,
28 Defendants.

Case No.

CLASS ACTION

COMPLAINT

- 1. **UNFAIR COMPETITION [Bus. & Prof. Code § 17200, et seq.]**
- 2. **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT [CAL. CIV. CODE §1750 et seq.]**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Francisco

11/30/2021
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

CGC-21-596857

JURISDICTION AND VENUE

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2 1. This Court has jurisdiction over this action pursuant to Code of Civ. Proc. §
3 410.10 because Plaintiff SANDRA WALKER is and was a resident of the State of California
4 during the relevant time period and because Plaintiff SANDRA WALKER purchased Kroger-
5 branded ground coffee from Defendant THE KROGER CO., and DOES 1 through 100
6 (collectively “Defendants”), from a Kroger-owned supermarket in the State of California.
7 Further, Defendants are qualified to do business in California and regularly conduct business in
8 California.

9 2. Venue is proper in this judicial district pursuant to Code of Civ. Proc. §395(a)
10 because Defendants, and each of them, do not reside in California and because Defendants’
11 unlawful business practices occurred in significant part in the County of San Francisco.

PLAINTIFF

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13 3. Plaintiff SANDRA WALKER is a citizen of the State of California, County of
14 San Francisco. During the Class Period, as defined below, she regularly shopped at the
15 Kroger store commonly referred to as Foods Co., located at 345 Williams Avenue, San
16 Francisco, California 94124, and bought Class Products. Plaintiff brings this class action
17 individually and on behalf of a Class of similarly situated individuals defined as follows:

18 All citizens of the State of California who purchased one or more of the Class
19 Products (“Class Products” are defined as Kroger-brand ground coffee in
20 canisters that show the number of cups that it represents can be made from the
21 canister’s contents) in California during the Class Period (“Class Period” is
22 defined as that period within the statute of limitations for this action and
23 extending until a Class is certified herein).

24 4. Plaintiff also seeks to represent a subclass (the “Consumer Subclass”) defined
25 as follows:

26 All citizens of the State of California who purchased for personal, family, or
27 household purposes, one or more of the Class Products in California during the
28 Class Period.

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1 members of the Class that would establish incompatible standards of conduct for Defendants,
2 and/or

3 ii. Adjudications with respect to the individual members that
4 would, as a practical matter, be dispositive of the interests of other members not parties to
5 the adjudications, or would substantially impair or impede their ability to protect their
6 interests, including but not limited to the potential for exhausting the funds available from
7 those parties who are, or may be, responsible Defendants; and

8 g. Defendants have acted, or refused to act, on grounds that are generally
9 applicable to the Class, thereby making final injunctive relief appropriate with respect to the
10 Class as a whole.

11 **DEFENDANTS**

12 8. Defendant THE KROGER CO. is an Ohio corporation, with its principal place
13 of business at 1014 Vine Street in Cincinnati, Ohio, 45202. In California, it owns and
14 operates hundreds of supermarkets under the Food 4 Less, Ralph’s, and Foods Co. brands, at
15 which it sells products under the Kroger brand, including ground coffee sold in canisters.

16 9. The true names and capacities, whether individual, corporate, partnership,
17 associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”),
18 are unknown to Plaintiffs who therefore sue these Doe Defendants by such fictitious names
19 pursuant to *Code of Civ. Proc.* § 474. Plaintiff will seek leave to amend this complaint to
20 allege their true names and capacities when they are ascertained.

21 10. Plaintiff is informed and believes, and based on that information and belief
22 alleges, that each of the Defendants named in this complaint, including each of the Doe
23 Defendants, is responsible in some manner for one or more of the events and happenings,
24 and proximately caused the injuries and damages, hereinafter alleged.

25 11. Plaintiff is informed and believes, and based on that information and belief
26 allege, that each of the Defendants named in this complaint, including each of the Doe
27 Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or
28 employee of each of the other Defendants, and that each Defendant was acting within the

1 course and scope of his, her, or its authority as the agent, servant, and/or employee of each
2 of the other Defendants. Consequently, each Defendant is jointly and severally liable to
3 Plaintiff and the other members of the Class for the damages sustained as a proximate result
4 of their conduct.

5 **FACTUAL ALLEGATIONS**

6 12. This case is based on a claim of misrepresentation and deception by Kroger in
7 selling Kroger-brand ground coffee in canisters that grossly overstate the number of cups of
8 coffee that can be made from their contents.

9 13. These canisters each contain a representation that the contents are sufficient to
10 make a certain number of cups. However, using the directions for making coffee on the
11 canister, the contents are insufficient to make that number of cups.

12 14. For example, some of the canisters of Kroger-brand ground coffee state that
13 they will make 235 cups. These canisters contain directions to make coffee by using one
14 rounded tablespoon of ground coffee for each six fluid ounce cup of coffee. However, using
15 that method, the canisters' contents will make no more than 173 cups. As set forth below,
16 following the canisters' alternative direction to make 10 cups of coffee also leaves the
17 consumer significantly short—in this example with only 216 cups.

18 15. This is not a “slack-fill” case where the size of the container allegedly makes
19 a consumer think he will receive more product than is actually in the box. Rather, the class
20 products in this case prominently feature a representation that the consumer will receive a
21 certain quantity that is impossible to obtain when following the product's own preparation
22 instructions.

23 16. Plaintiff SANDRA WALKER, who regularly buys Kroger-brand coffee in a
24 canister, has been routinely deceived by these misrepresentations.

25 17. Kroger manufactures, packages, advertises, distributes, and sells various types
26 of ground coffee under its own private label brand.

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1 18. During the Class Period, Kroger manufactured, packaged, advertised,
2 distributed, and sold its Kroger-brand ground coffee in canisters that show the number of
3 cups that it represents can be made from the canister’s contents (“Class Products”).

4 19. The Class Products are sold in various sizes—including 11.5 oz., 24 oz., 25
5 oz., 29 oz., 30.5 oz.—and various flavors—including Breakfast Blend Mild Roast, 100%
6 Columbian Medium Dark Roast, Decaf Classic Medium Roast, French Roast, Premium Blend
7 Medium Roast, Reduced Caffeine Lite Medium Roast, Select Brand Medium Roast, Special
8 Roast Medium Roast, Supreme Blend Medium Roast.

9 20. Kroger represents on the packaging of each of the Class Products that the
10 container includes enough ground coffee to make an approximate number of servings. For
11 example, as shown in the picture below, taken from Kroger’s website, Kroger prominently
12 states on the lower right-hand side of the front of its 30.5 oz. canister of Select Blend Medium
13 Roast ground coffee that the canister’s contents “MAKES ABOUT 235 CUPS”:¹



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¹ <https://www.kroger.com/p/kroger-select-blend-medium-roast-ground-coffee/0001111002335> (accessed 4/7/2021).

21. Below are representative images of other Class Products listed above showing similar representations:²



²https://www.kroger.com/search?query=Kroger%20Ground%20Coffee&searchType=previous_searches&fulfillment=all (accessed 4/7/2021).

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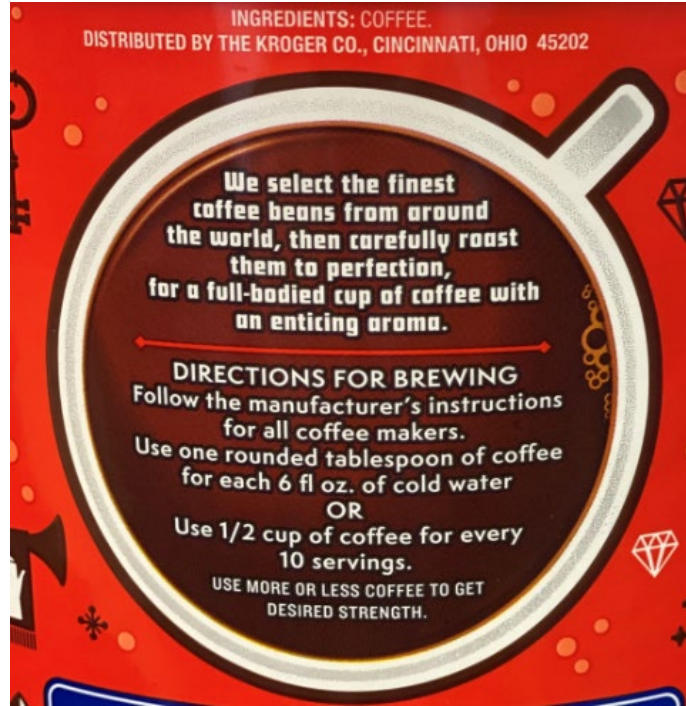
22. As can be seen, the number of cups that Kroger represents can be made depends on the size of the canisters:

- a. The 11.5 oz. (326 g) canisters represent they can make about 90 cups.
- b. The 24 oz. (680 g) canisters represent they can make about 185 cups.
- c. The 25 oz. (708 g) canisters represent they can make about 195 cups.
- d. The 29 oz. (822 g) canisters represent they can make about 225 cups.
- e. The 30.5 oz. (864 g) canisters represent they can make about 235 cups.

23. Those representations are false.

24. Brewing instructions on the back of the canisters direct consumers to use one of two methods. To make one cup, the directions state the consumer is to use one rounded tablespoon of coffee for each 6 fluid ounces of cold water, and to make 10 cups, the consumer is to use a half cup of coffee, as shown below:

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25. Those instructions, however, will not produce the number of cups of coffee that Kroger represents can be made on the front of the canisters.

26. One tablespoon of ground coffee typically weighs 5 grams.³

27. One tablespoon of Kroger's coffee weighs 5 grams.

³ <https://www.backyardbeans.com/blog/2017/11/1/how-much-coffee-should-i-use#:~:text=If%20you%20don't%20have,you%20use%20to%20brew%20with> ; <https://www.javapresse.com/blogs/enjoying-coffee/measure-coffee-without-a-scale> ; <https://www.roastycoffee.com/measure-coffee/> (accessed 4/7/2021).

1 28. For example, the pictures below show one level tablespoon of Kroger's 100%
2 Columbian Coffee being weighed on two different scales, showing that it weighs 5 grams (the
3 scales were tared so they only show the weight of the coffee, not the container):



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16 29. Kroger, however, recommends the use of a “rounded tablespoon,” which is
17 larger than a tablespoon. Thus, using Kroger’s instruction to use 1 rounded tablespoon of
18 ground coffee per 6 fluid ounce cup of cold water, the 30.5 oz./864 g. canisters will produce
19 no more than, and undoubtedly less than, 172.8 (or approximately 173) cups of coffee, not
20 235 cups.

21 30. The table below shows, for each of the above products, the maximum number
22 of cups Kroger represents can be made using the one-cup method, compared to the actual
23 maximum number that the canister will make using a level tablespoon (5g), along with the
24 difference, meaning the minimum number of cups the consumer paid for but did not receive:
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Class Product Size	Represented yield	Actual maximum yield⁴	Difference
11.5 oz.	90 cups	65 cups	25 cups
24 oz.	185 cups	136 cups	49 cups
25 oz.	195 cups	141 cups	54 cups
29 oz.	225 cups	164 cups	61 cups
30.5 oz.	235 cups	173 cups	62 cups

31. Following the alternative instructions on the canister to make 10 cups of coffee also fails to make the number of cups represented on the canister. As set forth above, one tablespoon of ground coffee weighs 5 grams. There are 8 tablespoons in a half cup⁵, meaning a half cup of ground coffee weighs 40 grams. Thus, following Kroger's 10 cup instruction to use a half cup of ground coffee, the canisters still produce less than the amount represented on the front of the canister.

32. The table below shows, for each of the above products while following the 10-cup instruction, the number of cups Kroger represents can be made, compared to the actual number that the canister will make, along with the difference, meaning the number of cups the consumer paid for but didn't receive:

⁴ Using one tablespoon (not one rounded tablespoon) for each cup, per the labeled directions.

⁵ <https://www.thecalculatorsite.com/articles/cooking/cups-and-tablespoons.php> (accessed 3/25/21).

Class Product Size	Represented yield	Actual yield	Difference
11.5 oz.	90 cups	81.5 cups	8.5 cups
24 oz.	185 cups	170 cups	15 cups
25 oz.	195 cups	177 cups	18 cups
29 oz.	225 cups	205.5 cups	19.5 cups
30.5 oz.	235 cups	216 cups	19 cups

33. Moreover, the Specialty Coffee Association (“SCA”) issues a “Golden Cup Standard,” which recommends a coffee-to-water ratio of 55 grams per liter, plus or minus 10%. This equates to 9.75 grams per six oz. \pm 10%. Thus, the SCA recommends approximately 9 to 11 grams (roughly 2 tablespoons) of coffee for every six fluid ounce cup that is brewed.

34. The two preparation methods on the back of the Class Products each direct consumers to use less than the SCA-recommended amount (nearly half the recommended amount), resulting in a relatively weaker cup of coffee.

35. Kroger’s representations regarding the number of cups its Class Products will make are deceptive because a reasonable consumer like Plaintiff expects that if the Class Products’ brewing instructions are followed, the canisters will yield the number of cups of coffee prominently displayed on the packaging. However, as demonstrated in the tables above, that is not the case.

36. By placing the representation regarding the number of cups the canister will make in such a prominent position on the packaging of the Class Products, Kroger intended that consumers would rely on it in deciding to purchase the product.

37. The deceptive nature of Kroger’s misrepresentations as set forth herein is especially egregious when considered in the context of other coffees that Kroger sells because not all brands of coffee sold in canisters carried by Kroger contain a representation regarding the number of cups that can be made from the contents, much less a false

1 representation. For example, Kroger sells Chock full o' Nuts coffee in cans that do not
2 contain such a representation:⁶



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12 38. Kroger also sells other brands' ground coffee, including Maxwell House, Café
13 Bustelo, and Yuban, in canisters that do not contain representations identifying the number
14 of cups that can be made from their contents:⁷



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26 ⁶ <https://www.kroger.com/p/chock-full-o-nuts-original-medium-roast-ground-coffee/0007103800044> (accessed 4/7/2021).

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28 https://www.kroger.com/search?query=ground%20coffe&searchType=default_search&fulfillment=all (accessed 4/7/2021).

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1 39. Kroger also sells Dunkin’ ground coffee in canisters that display the number
 2 of cups that can be made from the contents without overstating that number. For example,
 3 Dunkin Original Blend in a 30 oz. canister represents that it will make only up to 100 six-
 4 fluid oz. cups even though, by using the directions on the canister, one could actually make
 5 113 cups:⁸



18 40. These examples of ground-coffee products that do not misrepresent the number
 19 of cups that can be made from their contents demonstrate that there is no legitimate
 20 commercial reason why Kroger misrepresents the number of cups that can be made from its
 21 coffee products.

22 41. Plaintiff SANDRA WALKER has regularly purchased the Class Products
 23 during the Class Period, including most recently in 2020 and 2021.

24 42. During this time, Plaintiff SANDRA WALKER has purchased the Kroger
 25 branded 30.5 oz. 100% Columbian ground coffee canister.

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 28 ⁸ <https://www.kroger.com/p/dunkin-donuts-original-blend-medium-roast-ground-coffee/0088133401102> (accessed 4/7/2021)

1 51. Defendants’ scheme, as delineated herein, constitutes unlawful, unfair, or
2 fraudulent business practices in violation of the UCL.

3 52. Defendants’ business practices, as alleged herein, violate the “unfair” prong of
4 the UCL because: (i) the utility of Defendants’ scheme is significantly outweighed by the
5 gravity of the harm the scheme imposes on Plaintiff and the Class; (ii) the injury suffered by
6 Plaintiff and the Class as a result of Defendants’ scheme is not one that Plaintiff and the
7 Class could have reasonably avoided; and (iii) Defendants’ scheme runs counter to
8 legislatively declared and public policy.

9 53. Further, an unfair business practice under the UCL “is one that either ‘offends
10 an established public policy’ or is ‘immoral, unethical, oppressive, unscrupulous or
11 substantially injurious to consumers.’” *Evenchik v. Avis Rent A Car Sys., LLC*, 2012 WL
12 4111382, at *8 (S.D. Cal. Sept. 17, 2012) (*quoting McDonald v. Coldwell Banker*, 543 F.3d
13 498, 506 (9th Cir.2008) (*quoting People v. Casa Blanca Convalescent Homes, Inc.*, 159
14 Cal.App.3d 509, 530 (1984))).

15 54. Defendants’ business practices, as alleged herein, violate the “unlawful” prong
16 of the UCL because they constitute a violation of the Consumer Legal Remedies Act.

17 55. Defendants’ business practices, as alleged herein, violate the “fraudulent”
18 prong of the UCL because they are likely to deceive a reasonable consumer. Specifically,
19 Defendants have violated the “fraudulent” prong of the UCL by representing to consumers
20 and purchasers of its products that the coffee purchased would make a particular number of
21 cups of coffee following the instructions on the labeling when, in fact, that representation
22 was false.

23 56. Accordingly, Defendants violated, and continue to violate the UCL’s
24 proscription against engaging in unlawful business acts or practices.

25 57. As a direct and proximate result of Defendants’ unlawful, unfair, and
26 fraudulent business practices, Plaintiff and the Class have suffered injury in fact and lost
27 money or property, in that they paid for containers of coffee which could not possibly make
28 the advertised number of coffee cups on the product labeling.

- 1 • Violation of section 1770(a)(7), representing that the Class Products are of
- 2 a particular standard, quality, or grade when they are of another;
- 3 • Violation of section 1770(a)(9), advertising goods with intent not to sell
- 4 them as advertised; and
- 5 • Concealment, omission, and/or suppression of material facts regarding the
- 6 actual number of coffee cups which may be brewed per container so as to
- 7 create a likelihood of confusion or misunderstanding.

8 66. Defendants' acts or practices violate section 1770(a)(19) because they are
9 unconscionable in that they violate established ethical standards.

10 67. Defendants knew, or should have known, that their representations and
11 advertisements were false and misleading.

12 68. Plaintiff and the other Class members have suffered damages as a direct and
13 proximate result of Defendants' actions in violation of the CLRA.

14 69. Plaintiff, on behalf of herself and for all similarly situated, seeks an order from
15 this Court under section 1780(a)(2) of the Civil Code enjoining Defendants from continuing
16 to engage in the practices set forth in this Complaint and a declaration that Defendants'
17 conduct violates the CLRA.

18 70. Plaintiff is not presently seeking compensatory or exemplary damages,
19 pursuant to sections 1780 and 1782(b) of the Civil Code. Plaintiff, however, will be serving
20 Defendants, in accordance with section 1782(a) of the Civil Code, with notice of Defendants'
21 alleged violations of the CLRA by certified mail, return receipt requested. If Defendants fail
22 to provide appropriate relief for its violations of the CLRA within 30 days of Plaintiff's
23 notification letter, Plaintiff will seek to amend this complaint to seek compensatory and
24 exemplary damages, pursuant to sections 1780 and 1782(b) of the Civil Code.

25 71. Plaintiff incorporates herein and refers to the Declaration of Sandra Walker in
26 support of Plaintiffs' selection of forum for trial of Plaintiffs' claim arising under the
27 California Consumer Legal Remedies Act filed in this matter. That Declaration satisfies the
28 requirements of Civil Code, § 1780(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully request that the Court enter judgment against Defendants, as follows:

1. An order certifying appropriate classes and/or subclasses, designating Plaintiff as the class representatives and her counsel as class counsel;
2. An order enjoining Defendants from continuing to engage in the practices complained of herein;
3. An award of restitution, damages, and disgorgement to Plaintiff and the Class in an amount to be determined at trial;
4. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded, as allowed by law;
5. An award of costs and attorneys’ fees, as allowed by law; and
6. Such other or further relief as may be appropriate.

Dated: November 30, 2021

ARIAS SANGUINETTI WANG & TORRIJOS LLP

By: _____

MIKE ARIAS
ALFREDO TORRIJOS
ROBERT M. PARTAIN

Attorneys for Plaintiff

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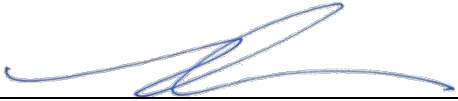
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DEMAND FOR JURY TRIAL

Plaintiffs and the other members of the Class hereby demand a trial by jury on all claims so triable.

Dated: November 30, 2021

ARIAS SANGUINETTI WANG & TORRIJOS LLP

By: 

MIKE ARIAS
ALFREDO TORRIJOS
ROBERT M. PARTAIN

Attorneys for Plaintiff

ARIAS SANGUINETTI WANG & TORRIJOS LLP

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