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Lead Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: COCA-COLA PRODUCTS
MARKETING AND SALES PRACTICES
LITIGATION (NO. II)

Case No. 4:14-md-02555-JSW

**CLASS ACTION AND
REPRESENTATIVE ACTION**

**AMENDED CONSOLIDATED
COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

THIS DOCUMENT RELATES TO:

Engurasoff v. The Coca-Cola Company, et al.
Case No. 4:13-CV-03990-JSW

Aumiller v. The Coca-Cola Company, et al.
Case No. 4:14-cv-01447-JSW

Merritt v. The Coca-Cola Company, et al.
Case No. 4:14-cv-01067-JSW

Nobles v. The Coca-Cola Company, et al.
Case No. 4:13-cv-05017-JSW

1 Plaintiffs Ayanna Nobles, Thomas C. Woods¹, Paul Merritt, George Engurasoff, and
2 Joshua Ogden (collectively “Plaintiffs”), individually, and on behalf of similarly situated persons,
3 through their undersigned attorneys, bring this lawsuit against Defendants The Coca-Cola
4 Company, Coca-Cola Refreshments USA, Inc., BCI Coca-Cola Bottling Company of Los
5 Angeles, and Coca-Cola Bottling Company of Sonora, California Inc. (collectively
6 “Defendants”).

7 PRELIMINARY STATEMENT

8 1. This case is about Coca-Cola, one of the most famous and respected brands in the
9 world. Faced with clear evidence that it was losing market share because consumers increasingly
10 preferred beverages without artificial flavoring and chemical preservatives, The Coca-Cola
11 Company, owner of the brand, responded not by providing consumers with what they wanted -- a
12 natural and healthy drink -- but by deceiving them into thinking that Coca-Cola was natural and
13 healthy when in fact it contained artificial flavoring and chemical preservatives. This choice by
14 The Coca-Cola Company was not just an example of bad corporate citizenship. It also clearly
15 violated federal and state laws specifically prohibiting the precise kind of misbranding and
16 misleading behavior exhibited by The Coca-Cola Company.

17 2. The Coca-Cola Company is the world’s largest beverage company. Its product,
18 Coca-Cola,² is the world’s most popular soft drink and is one of the most well-known and trusted
19 brand names in the world. Sales of Coca-Cola, however, are fueled by false and deceptive
20 representations that Coca-Cola is not only a healthy product, but one free of artificial flavoring
21 and chemical preservatives. Every container of Coca-Cola sold in the United States either falsely
22 states that it does not contain artificial flavoring and chemical preservatives, or fails to
23 affirmatively state - - as required by state and federal law - - that it, in fact, contains both artificial
24 flavoring and chemical preservatives.

25 ¹ Plaintiff Thomas C. Woods has substituted and replaced plaintiff Bristol I. Aumiller.

26 ² As used in this complaint “Coca-Cola” is defined to mean that specific soft drink that is
27 commonly sold by Defendants in red cans or bottles containing red labels, and that is sometimes
28 referred to by Defendants as the “original formula.” As used herein, the term “Coca-Cola” is not
meant to include any distinct soft drinks, including but not limited to, Diet Coke, Cherry Coke,
Coca-Cola Life, Coke-Zero, or Caffeine Free Coca-Cola, which may have similar names.

1 3. Advertisements containing the “Coca-Cola” brand name are ubiquitous throughout
2 the country. There are few places in the United States where it is not prominently displayed on
3 billboards, television and radio advertisements, and in-store displays. Defendants leverage this
4 brand name to sell millions of containers of Coca-Cola. Through their advertising efforts,
5 Defendants portray Coca-Cola as an all-American product. They also falsely portray Coca-Cola
6 as a healthy and all-natural product.

7 4. Indeed, The Coca-Cola Company’s own website directs consumers to the website
8 of The Coca-Cola Company Beverage Institute for Health & Wellness, which portrays
9 Defendants’ products, including Coca-Cola, as an integral part of a healthy diet and an excellent
10 means of maintaining proper hydration. The website specifically states that: “Global in scope, the
11 Beverage Institute for Health & Wellness (BIHW) is part of The Coca-Cola Company’s ongoing
12 commitment to use evidence-based science to advance knowledge and understanding of
13 beverages, beverage ingredients, and the important role that active healthy lifestyles play in
14 supporting health and wellbeing.” *See* <http://beverageinstitute.org/us/about-us/>.

15 5. It goes so far as to recommend that Defendants’ products, including Coca-Cola,
16 should specifically be used to maintain the health and well-being of children. It states: “Studies
17 suggest that active children consume more fluids and stay better hydrated when the liquid is
18 flavored. Beverages that are sweetened with caloric sweeteners or with low- and no-calorie
19 sweeteners can be an important contributor to hydration, providing a sweet taste that encourages a
20 child to consume more fluid.” *See* [http://beverageinstitute.org/us/article/special-considerations-](http://beverageinstitute.org/us/article/special-considerations-for-children/)
21 [for-children/](http://beverageinstitute.org/us/article/special-considerations-for-children/).

22 6. Defendants’ concerted efforts to employ false and deceptive labeling practices to
23 mislead consumers into thinking Coca-Cola is natural and healthy, when in fact it is neither, did
24 not occur by accident. Rather, it was a response to changing consumer preferences, which were
25 causing Coca-Cola, as well as other carbonated soft drinks, to lose market share.

26 7. By 2008, Defendants realized they had a significant problem. Sales of carbonated
27 sodas were precipitously dropping and reached their lowest levels since 1997. *See* Jessica Wohl,
28 *U.S. Soft-Drink Volume Decline Steepest in Decades*, Reuters, Mar. 30, 2009.

1 8. Worse still, consumers were not only buying and drinking less soda, they were
2 switching to other beverages entirely. Studies showed that because soda was associated with
3 empty calories and artificial ingredients, consumers were fundamentally changing their drinking
4 habits. One leading study showed that between 2003 and 2008 the regular carbonated soft drink
5 market lost 15.6 million adult drinkers. Marketing research showed that consumers were
6 increasingly interested in all natural foods that did not contain chemical preservatives or artificial
7 flavors. *See Classic Soft Drinks Fall Out of Favor*, Mar. 30, 2009 (available at
8 <http://www.mintel.com/press-centre/food-anddrink/classic-soft-drinks-fall-out-of-favor>).

9 9. These developments were a major concern for Defendants because their beverage
10 business, and their flagship Coca-Cola brand, contained chemical preservatives and artificial
11 flavorings.

12 10. Defendants were aware that Coca-Cola's sales were declining because, as
13 established by consumer surveys, an overwhelming majority of consumers correctly and
14 accurately perceived their products to be unnatural, artificial and chemically preserved. This
15 critical fact was compounded as competitors like PepsiCo. and Red Bull GmbH began
16 introducing new cola products that were being touted as "all natural" or "100% natural" and
17 which lacked certain artificial ingredients, like the phosphoric acid the Defendants used to
18 artificially flavor and chemically preserve Coca-Cola.

19 11. The situation so substantially affected Defendants that The Coca-Cola Company's
20 Chief Marketing and Commercial Officer referred to these changes in consumer preferences as a
21 "category five" hurricane that was "really bearing down on us." *See* FD (Fair Disclosure) Wire,
22 *The Coca Cola Company Analyst Meeting Day 1*, Nov. 16, 2009. He went on to note that: "That
23 is not a fad. Consumers who classify themselves as LOHAS [Lifestyles of Health and
24 Sustainability] or those who value natural ingredients represent in some markets 35% of the total
25 market." *Id.*

26
27
28 **The Pemberton Campaign**

1 12. Rather than reformulate Coca-Cola and their other soft drinks to appeal to these
2 changing consumer preferences for natural and healthy beverages, Defendants adopted a global
3 campaign of disinformation, false advertising, false labeling and misbranding, dubbed
4 “Pemberton” after John Pemberton, the pharmacist who invented Coca-Cola. This campaign was
5 designed to mislead into falsely believing that Coca-Cola was not artificially flavored or
6 chemically preserved. In so doing, they not only misled and deceived consumers but, as described
7 below, broke a number of federal and state food labeling laws designed to protect consumers
8 from such illegal and deceptive practices.

9 13. The main goal of the Pemberton campaign was, as admitted at the time by the
10 Global Brand Director of Coca-Cola, to falsely represent to consumers that Coca-Cola never had,
11 and never would, add chemical preservatives or artificial flavorings. As a spokesperson for
12 Defendants stated in 2008, “‘Pemberton’ is more fact-based, affirming for consumers that Coca-
13 Cola never has had, and never will have, added preservatives or artificial flavors.” *See New York*
14 *Times*, Aug. 6, 2008, “Coke Campaign Focuses on What’s Not in the Can; ‘No Added
15 Preservatives or Artificial Flavors.’”

16 14. As a key linchpin of their Pemberton Campaign, Defendants placed false
17 affirmative statements on product labels and packages of two-liter bottles and 12-pack and 24-
18 pack cartons of Coca-Cola. Specifically, the Defendants placed a false statement on the labels and
19 packages representing that Coca-Cola contained “**no artificial flavors. no preservatives added.**
20 **since 1886.**” This statement, as well as the entire premise of the Pemberton campaign, was false
21 and misleading.

22 15. In fact, Coca-Cola contains phosphoric acid. Phosphoric acid is both an artificial
23 flavoring and a chemical preservative.

24 16. Also false was the prominent representation on Coca-Cola containers and
25 advertisements that Coca-Cola is still made with the “original formula” devised by Pemberton in
26 1886. In fact, the composition of Coca-Cola has repeatedly changed over time. These changes
27 have included, among other things, an increase in the amount of unhealthy ingredients like sugar
28 and corn syrup and the addition of artificial ingredients like phosphoric acid. *See Coca-Cola*

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